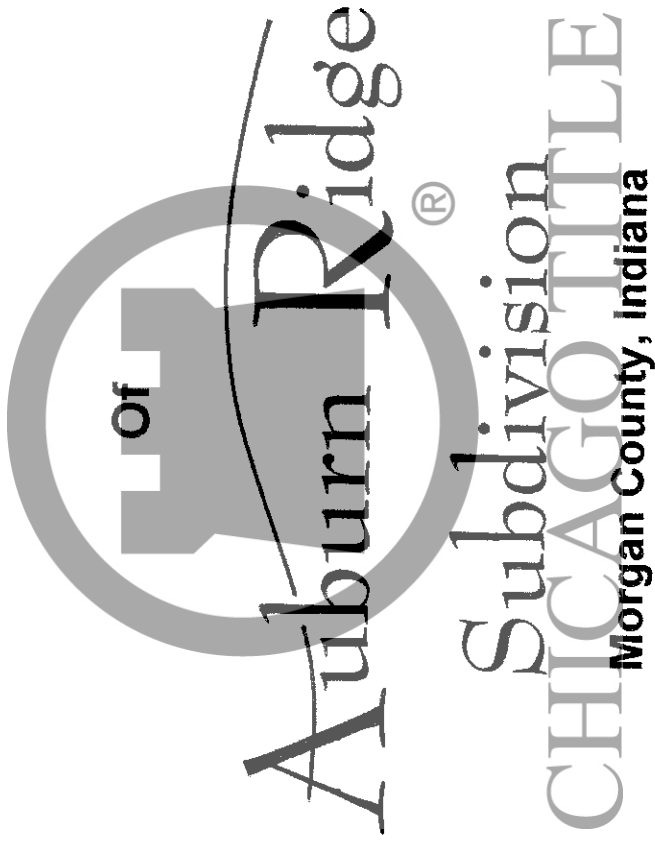
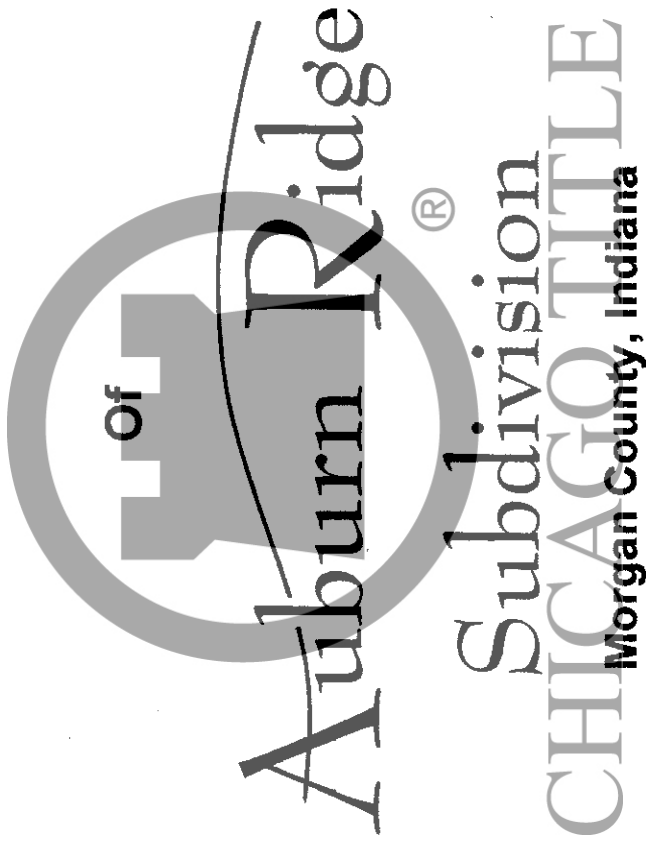


**Declaration
of Covenants and Restrictions**



**Declaration
of Covenants and Restrictions**



DECLARATION OF COVENANTS AND RESTRICTIONS

OF

Auburn Ridge

Subdivision

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DECLARATION OF COVENANTS AND RESTRICTIONS

OF

Auburn Ridge

Subdivision

This Declaration of Covenants and Restrictions of Auburn Ridge Subdivision ("Declaration") is made this 19th day of November, 1999, by Jerry L. Hillenburg (the "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the Owner of real estate in Morgan County, State of Indiana, which is more particularly described in Exhibit "A" attached hereto and hereby reference (hereinafter referred to as the "Real Estate"); and

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with private streets, landscaped areas, open spaces, walls, fences and other common areas and amenities for the benefit of such residential community, to be known as "Auburn Ridge Subdivision Section I"; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common areas therein contained, and, to this end, Declarant desires to subject the Real Estate and any additional property which is hereafter made subject to this Declaration by Supplemental Declaration to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each Owner of all or part hereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of supervising, maintaining and administering any common areas located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the Owners of the Real Estate, and all parts thereof and;

WHEREAS, Declarant has caused, or will cause, to be incorporated under the Indiana Code 23-17-1, et seq., under the name "Auburn Ridge Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant, as owner of the Real Estate and any additional property which is hereafter made subject to this Declaration by Supplemental Declaration hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Tracts situated therein.

ARTICLE I (R)
Definitions

Section 1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- (a) "Act" shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended;
- (b) "Applicable Date" shall mean and refer to the date determined pursuant to Article VIII Section 2b of this Declaration;
- (c) "Association" shall mean and refer to Auburn Ridge Homeowners Association, Inc., an Indiana corporation organized under Indiana Code 23-17-1, et seq., which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns;

- 79 (d) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as
80 the same may be amended from time to time;
81
- 82 (e) "Board" or "Board of Directors" shall mean and refer to the governing body of the
83 Association elected, selected or appointed as provided for in the Articles, Bylaws
84 and this Declaration;
85
- 86 (f) "Bylaws" shall mean and refer to the Code of Bylaws of the Association, as the
87 same may be amended from time to time;
88
- 89 (g) "Architectural Control Committee" shall mean and refer to the "Auburn Ridge
90 Architectural Control Committee", the same being the Architectural Control
91 Committee or entity established pursuant to Article XI, Section 1, of this Declaration
92 for the purposes herein stated;
93
- 94 (h) "Common Areas" shall mean and refer to; (i) all portions (including but not
95 limited to Private Roadways as defined in (p) of this Section) of the Real Estate
96 shown on any recorded subdivision plat of the Real Estate which are not dedicated
97 to the public and which are not identified as Tracts on any such plat, whether such
98 plat is heretofore or hereafter recorded, (ii) such portions of the Real Estate as are
99 herein declared to be Common Areas on the plat of the Real Estate even though
100 located on or constituting part of one or more such Tracts shown on any such plat,
101 (iii) to the extent hereinafter established, such improvements located, installed or
102 established in, to, on, under, across or through the Real Estate as are herein
103 declared to be Common Areas whether located, installed or established entirely or
104 partially on Tracts (as herein defined) or portions of the Real Estate which are not
105 Tracts, or both;
106
- 107 (i) "Common Expenses" shall mean and refer to expenses of administration of the
108 Association, and expenses for the upkeep, maintenance, repair and replacement of
109 the Common Areas, and Private Roadways, and all sums lawfully assessed against
110 the Owners by the Association, and all sums, costs and expenses declared by this
111 Declaration to be Common Expenses;
112
- 113 (j) "Declarant" shall mean and refer to Jerry L. Hillenburg and any successors and
114 assigns of Jerry L. Hillenburg whom he designates in one or more written recorded
115 instruments to have the rights of Declarant thereunder, including, but not limited to,
116 any mortgagee acquiring title to any portion of the Real Estate pursuant to the
117 exercise of rights under, or foreclosure of, a mortgage executed by Declarant;
118
- 119 (k) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof
120 situated on the Real Estate designed and intended for use and occupancy as a
121 residence by one (1) single family;
122

(l) "Tract" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Areas) designed and intended for use as a building site for, or developed and improved for use as, a single family Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit), as designated by Declarant by its deed of the same to another Person. After conveyance of a Tract by Declarant to another Person, a Tract may not be subdivided by that Person in order to create another building site. A Tract will not necessarily be the same as any single numbered parcel of land shown upon, and identified as a Tract on, any recorded subdivision plat of the Real Estate or any part thereof. For purposes of this Declaration, a "Tract" may be (i) any single numbered parcel of land identified as a Tract on such subdivision plat, (ii) part of such a numbered parcel of land, (iii) such a numbered parcel of land combined with part or all of another such numbered parcel of land, or (iv) parts or all of two (2) or more of such numbered parcels of land combined. The determination of what portion of the Real Estate constitutes a "Tract" for purposes of this Declaration shall be made by reference to, and shall mean, each tract of land conveyed by Declarant to another Person for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit). Notwithstanding the foregoing, if after the initial conveyance of a portion of the Real Estate by Declarant to another Person it is agreed between Declarant and such Person to enlarge or reduce or otherwise change the portion of the Real Estate so originally conveyed to such Person as a "Tract", then the determination of what portion of the Real Estate constitutes such "Tract" for purposes of this Declaration shall be made by reference to, and shall mean, such "Tract" initially so conveyed by Declarant, as the same has been adjusted or changed at any time by conveyances by and between Declarant and such Person. Any deed or other instrument of conveyance so adjusting or changing the description of a "Tract" shall state on its face that it is made for such purpose. Any part of a "Tract" reconveyed to Declarant shall, upon such reconveyance, lose its character as part of a "Tract" and may thereafter be conveyed by Declarant as part of another "Tract". The foregoing procedures may be used to correct errors in descriptions, to adjust boundary lines of "Tracts" or for any other reason;

(m) "Mortgages" shall mean and refer to the holder of a recorded first mortgage lien on a Tract or Dwelling Unit;

(n) "Owner" shall mean and refer to the record Owner, whether one or more Persons, of the fee simple title to any Tract, but in any event shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Tract, but upon so acquiring title to any Tract a mortgagee or tenant shall be an Owner;

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166 (o) "Person" shall mean and refer to an individual, firm, corporation, partnership,
 167 association, trust, or other legal entity, or any combination thereof;
 168

169 (p) "Private Roadways" (designated as "access and utility easements #1 and #2" on
 170 any recorded subdivision plat) shall mean and refer to Common Areas on the Real
 171 Estate that are streets or roads, which are not dedicated to the public, and created
 172 by easements on the Tracts for the use and enjoyment of the several Tract Owners
 173 and their Guests, and others as described in Article II, Section 3.
 174

175 (q) "Properties" shall mean and refer to the real property described in Exhibit "A"
 176 attached hereto, together with such additional property as is hereafter made subject
 177 to this Declaration by Supplemental Declaration;
 178

179 (r) "The Real Estate" shall mean and refer to the parcel of real estate in Morgan
 180 County, Indiana, described in Exhibit "A" attached to this Declaration, as referred to
 181 in the first recital clause of this Declaration, and defined therein as the Real Estate;
 182

183 (s) "Restrictions" shall mean and refer to the agreements, condition, covenants,
 184 regulations, restrictions, easements, assessments, charges, liens and all other
 185 provisions set forth in this Declaration, as the same may be amended from time to
 186 time;
 187

188 (t) "Standards" shall mean and refer to "Restrictions" as defined above;
 189

190 **Section 2.** Other terms and words defined elsewhere in this Declaration shall
 191 have the meanings herein attributed to them. ^(R)

192
 193
 194
 195 **ARTICLE II**
 196 **Declaration; Common Areas and Private Roads and Rights Therein**

197 **Section 1. Declaration.** Declarant hereby expressly declares that the Properties
 198 shall be held, transferred and occupied subject to the Restrictions. The Owners of any
 199 Tract subject to these Restrictions, and all other Persons, by (i) acceptance of a deed
 200 conveying title thereto, or the execution of a contract for the purchase thereof, whether
 201 from Declarant or a subsequent Owner of such Tract, or (ii) by the act of occupancy of
 202 any Tract, shall conclusively be deemed to have accepted such deed, executed such
 203 contract and undertaken such occupancy subject to each Restriction and agreement
 204 herein contained. By acceptance of such deed, or execution of such contract, or
 205 undertaking such occupancy, each Owner and all other Persons acknowledge the
 206 rights and powers of Declarant, the Architectural Control Committee and of the
 207 Association with respect to these Restrictions, and also for itself, its heirs, personal
 208 representatives, successors and assigns, covenant, agree and consent to and with
 209 Declarant, the Architectural Control Committee, the Association, and the Owners and

subsequent Owners of each of the Tracts affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas (except for such portions of the Common Areas, if any, as to which, in accordance with other provisions hereof, the use, enjoyment and benefit is limited to the Owners of certain designated Tracts to the exclusion of other Tracts) subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Tract.

Section 3. Private Roadways. The Private Roadways (designated as "access and utility easements #1 and #2" on any recorded subdivision plat) are Common Areas made of mutual non-exclusive easements as herein described in Article II Section 2. The easements are fifty (50) feet in width for ingress and egress for the benefit of the several Owners and their guests of Tracts of, this Section (Section One) of Auburn Ridge, future Sections of Auburn Ridge, and for property described in Exhibit "B". The Private Roadway easements are more particularly described in this Section's Plat of Auburn Ridge. The cost of maintaining and repairing such Private Roads and future Section's Private Roadways in good, serviceable condition shall be borne equally (by assessment as hereinafter provided) by the several Owners of Tracts of; this Section (Section One) of Auburn Ridge, future Sections of Auburn Ridge, and Property described in Exhibit "B". **During the spring months of March and April no vehicle, over fifteen (15) ton GVW may use Private Roadways (except school buses, emergency vehicles and refuse trucks contracted by the Association).** There is hereby created a non exclusive easement upon, across, over, and under all roadways for ingress, egress for road maintenance, installation, repairing, all utilities, including but not limited to water, sewers, gas, telephone, electricity, and master antenna or cable system for this Section of Auburn Ridge, future Sections of Auburn Ridge, and Property described in Exhibit "B". By virtue of this easement, it shall be expressly permissible for the company providing utility service to erect and maintain necessary poles, equipment, and lines upon such easement to affix and maintain wires, circuits, conduits on, above, and under the roadway easement. A non-exclusive easement is further granted for commercial farm operations traffic to use the roadway for ingress and egress to and from the County Road (Waverly Road) to and from a Tract or Tracts located on Property described in Exhibits "B". An easement is further granted to all police, fire protection, ambulance, school buses, mail and parcel carriers, school buses, delivery and service personnel and vehicles and entities similar, to enter upon the roadways in performance of their duties.

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ARTICLE III

255

Obligations of Declarant as to Common Areas

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Section 1. Agreement to Construct and Convey other Common Areas.

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Declarant has constructed or provided for, or will prior to the Applicable Date construct or provide for Common Areas consisting of the following items:

260

261

(a) the installation, in Common Areas or landscape easements of landscaping and other screening materials;

262

263

(b) the installation, within the Private Roadway right-of-way, of street lighting and street signs, subdivision identification sign in Common Area.

264

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Upon Applicable Date, Declarant covenants to convey by quitclaim deed all of his right, title and interest in the Common Areas on the Real Estate to the Association and all such right, title and interest in and to said items (whether owned in fee, by leasehold, by contract or in the nature of an easement or license) shall then be property of the Association, whether or not the same may be located entirely or partially on any one or more of the Tracts. As to any of such items of and constituting the Common Areas and Private Roadways located entirely or partially on any one or more of the Tracts, the Owners of such Tracts shall have only non-exclusive easement rights therein as described in Article II, Section 2, of this Declaration. Nothing herein shall interpret conveyance of Declarant's blanket non-exclusive easement for utilities, and egress and ingress to and from the county road (Waverly Road) to and from Tracts located on Property described in Exhibit "B", and nothing herein shall preclude Declarant from using said easement for commercial farm operations or future development.

279

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Section 2. Additional Common Areas at Declarant's Option. Declarant may,

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at its option but without obligation to do so, convey other portions of the Real Estate to the Association for, or construct, install or provide for other items for or on, or services

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to serve the Real Estate as amenities for the mutual benefit, use or enjoyment of the Owners. Included as examples of the foregoing, but not limited therein, might be a

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television antenna or receiving device to serve all of the Dwelling Unites, storage

284

buildings for storage of articles by Owners or provisions of portions of the Real Estate

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for recreational or other common uses or purposes for the Owners, including without

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limitation, a swimming pool, tennis courts, clubhouse or other recreational facilities or

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additional entrances, landscaped areas and walls. Any such portions of the Real

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Estate, or other items, or services, which Declarant, at its sole option, elects to convey,

289

construct, install or provide as Common Areas shall become a part of the Common

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Areas only when so designated by Declarant in a written instrument executed by

291

Declarant and delivered to the Association. Upon any such designation by Declarant,

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Declarant shall convey by quitclaim deed all of its right, title and interest in and to the

293

Common Areas so designated to the Association and all such right, title and interest in

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and to the Common Areas so designated and conveyed shall then and there upon be

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and become the property of the Association, whether or not the same constitutes, or

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298 may be located entirely or partially on, any one or more of the Tracts or any Tract
299 shown upon any recorded subdivision plat of the Real Estate, or parts thereof. As to
300 any of such Common Areas so designated and conveyed pursuant to the foregoing
301 provisions of this Section 2 which are located entirely or partially on any one or more of
302 the Tracts, the Owners of such Tracts shall have only non-exclusive easement rights
303 therein or thereto, as described in Article II, Section 2, of this Declaration.
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ARTICLE IV
Architectural Standards

309 **Nothing** shall be erected on any tract that is not in strict compliance with Article XI.
310

311 **Section 1. Accessory Buildings.** Maximum of one (1) Detached Garage, Barn,
312 Utility/storage Building, (Accessory Buildings) is permitted on each Tract. Accessory
313 Building location must be approved by the Architectural Control Architectural Control
314 Committee. Accessory Buildings are to be a maximum of one (1) story. On tracts of
315 three (3) acres or less, maximum size of any Accessory Building shall be nine hundred
316 (900) square feet, excluding attic footage, with a maximum ceiling height of nine (9)
317 foot. On tracts of three (3) acres or more, maximum size of any Accessory Building
318 shall be fifteen hundred (1500) square feet, excluding attic footage, with a maximum
319 ceiling height of ten (10) foot. All Accessory Buildings shall conform to Article IV
320 Sections 13 and 14, and exterior colors to conform to Dwelling exterior. Accessory
321 Buildings over one hundred eighty (180) square feet shall conform to Article IV Section
322 9 and 12. Variances from the above requirements for Tracts of five acres or more may
323 be granted by Architectural Control Committee. **Absolutely no metal pole barns are**
324 **permitted on Real Estate.**
325

326 **Section 2. Address Identification on Dwelling.** An address stone is to be
327 placed on the front masonry exterior of all homes. The location and type of stone is
328 subject to approval of the Architectural Control Committee.
329

330 **Section 3. Air Cooling Units.** Air Cooling units or other like utilities that are
331 outside of the Dwelling or Accessory Building must be located at the side or rear of the
332 home, except as may be permitted by the Architectural Control Architectural Control
333 Committee. Window air conditioners when used as through a window installation is
334 prohibited. Window air conditioners when used as through a wall installation is
335 permitted except, on a street side or front of a Dwelling or Accessory Building.
336

337 **Section 4. Building Codes.** Each Dwelling to conform to all applicable building
338 codes for Morgan County Indiana and for the State of Indiana.
339

340 **Section 5. Building Location.** No building shall be located on any Tract nearer
341 to any Tract line which borders a street or road than fifty (50) feet, or nearer to the side

342 and rear Tract line than forty (40) feet. For the purpose of this covenant, eaves, steps
343 and open porches shall not be considered a part of the building; provided, however,
344 that this shall not be construed to permit any portion of any building on any Tract to
345 encroach upon any other Tract unless the other Tract, or part thereof, is owned by the
346 same owner. The division of a Tract for the purpose of creating an additional building
347 site is prohibited.

348
349 **Section 6. Driveways.** All driveways and vehicle parking areas shall be hard
350 surfaced with either concrete four (4) inches thick or asphalt three (3) inches thick with
351 a gravel base, or an acceptable alternate approved by the Architectural Control
352 Committee and shall be so surfaced from their point of connection with the abutting
353 street to their point of connection with the garage apron. No gravel or stone driveways
354 will be permitted. A culvert of not less than twelve (12) inches in diameter may be
355 required by Architectural Control Architectural Control Committee. The location shall be
356 approved by the Architectural Control Committee. Driveways must be maintained in
357 good repair by the Tract owners.

358
359 **Section 7. Dwelling Floor and Foundation.** All dwellings must be built on a
360 crawl space or basement. No slab construction will be allowed.

361
362 **Section 8. Dwelling size.** No dwelling shall exceed three (3) stories in height.
363 An attached, finished private garage for at least two (2) cars and no more than four (4)
364 must be included. The ground floor of the dwelling structure, exclusive of porches,
365 basements and garages, shall not be less than one thousand seven hundred (1700)
366 square feet for a one story dwelling, nor less than one thousand four hundred (1400)
367 square feet for a dwelling of more than one story. Dwellings of more than one story
368 must have not less than a total of two thousand four hundred (2200) square feet
369 excluding basement.

370
371 **Section 9. Exterior Materials.** All exteriors of Dwelling and Accessory Buildings
372 over one hundred eighty (180) square feet shall have One Hundred (100) percent
373 masonry construction, except front porches, bay windows, breezeways, and gables.
374 Wood siding is allowable on the upper walls of multi-story homes. Variances from the
375 above material requirements for Period Dwellings may be submitted to Architectural
376 Control Architectural Control Committee. There shall be no vinyl or aluminum siding on
377 Dwelling or Accessory Building except for soffits. Exterior colors must be approved by
378 Architectural Control Architectural Control Committee.

379
380 **Section 10. Heating Plant.** Every Dwelling Unit must contain a non-
381 woodburning heating plant installed in compliance with the applicable codes and
382 capable of providing adequate heat for year-round human habitation of the Dwelling
383 Unit.

384

385 **Section 11. Log Cabins, Manufactured Housing, Mobil Homes.** No log
386 cabins, manufactured housing, mobile home, modular or sectional home will be
387 permitted on Real Estate.
388
389 **Section 12. Overhang and Eaves.** Overhang and eaves shall be a minimum of
390 twelve (12) inches, excluding any exterior finish and guttering.
391

392 **Section 13. Prohibition of Used Structures.** All structures constructed or
393 placed on any Tract shall be constructed with substantially all new materials, and no
394 used structures shall be relocated or placed on any such Tract.
395

396 **Section 14. Roof Pitch and Roof Materials.** If the roof is a hip type then a
397 minimum of 6½/12 pitch shall be used. If the roof is to be a gable type then a minimum
398 of 8/12 pitch shall be used. **Only wood, slate, or dimensional fiberglass or**
399 **dimensional asphalt shingles may be used for roof cover.**
400

401 **Section 15. Sewage Disposal.** Each Tract owner shall install a private Septic
402 System for sewage disposal. The System shall conform to the rules and regulations of
403 the Morgan County Board of Health.
404

405 **Section 16. Water.** All Tract owners are required to connect to the public water
406 system.
407

408
409
410 **ARTICLE V**
411 **Construction Standards**

412 **Nothing** shall be erected on any tract that is not in strict compliance with Article XI.
413

414 **Section 1. Builder/Contractor's Copy of This Declaration.** Owner of Tract to
415 provide their builder/contractor or agents a copy of Auburn-Ridge, Section 1 (or
416 subsequent sections) Declaration of Covenants and Restrictions.
417

418 **Section 2. Damage during Construction.** All Tract owners and their
419 builders/contractors shall be responsible for and repair or restore any damage during
420 construction, whether or not inadvertent or unavoidable, including but not limited to,
421 roadways, drainage areas, landscaping, utilities or other improvements. **During the**
422 **spring months of March and April no vehicle over fifteen (15) ton gross vehicle**
423 **weight may use Private Roadways (except school buses, emergency vehicles,**
424 **and refuse trucks contracted by the association).** In the event of damage the Tract
425 owner shall be responsible for any and all damages incurred by the Declarant, or the
426 Association. The Declarant, until the Applicable Date, and, thereafter, the Association,

427 shall have the right to assess cost for repair of damage. The Tract owner is responsible
428 for the acts of any builder, contractor, or subcontractor doing work on owner's Tract.
429

430 **Section 3. Diligence in Construction.** Every building whose construction on
431 any Tract is begun shall be completed within one hundred eighty days (180) after the
432 beginning of such construction unless circumstances beyond the reasonable control of
433 the builder and/or Owner prevent such completion. No improvement which has partially
434 or totally been destroyed by fire or otherwise, shall be allowed to remain in such state
435 for more than three (3) months from the time of such destruction or damage. The
436 Declarant and/or Homeowners Association shall have standing and authority to seek
437 an injunction or order for the removal of any materials and partially completed
438 structures in violation of this covenant.
439

440 **Section 4. Erosion Control During Construction.** All owners shall be fully
441 responsible for providing proper erosion control on their Tract. In the event proper
442 erosion control is not maintained, the Tract owner shall be responsible for any and all
443 damages incurred by the Declarant, or the Association. The Declarant, until the
444 Applicable Date, and, thereafter, the Association, shall have the right to assess cost for
445 repair of damage caused by the tract owners failure of control erosion. The tract owner
446 is responsible for the acts of any builder, contractor or subcontractor doing work on the
447 owner's Tract. Standards for erosion control shall be set by the Declarant.
448

449 **Section 5. Jobsite Cleanliness.** All owners and their builders/contractors shall
450 be responsible for and maintain the job site in a reasonable, sightly order, containing all
451 trash and debris in dumpsters or trash pens. All trash and debris to be removed from
452 site when dumpsters or trash pens are full. **Disposal of trash and debris by burying
453 or fire is prohibited.**
454

455 **Section 6. Temporary Dwellings.** Except as may be permitted by Declarant or
456 Committee during initial construction within the Properties, no trailer, shack, tent, boat,
457 basement, garage, or other outbuilding may be used as a dwelling, either temporarily or
458 permanently, either before, during or after construction.
459

460
461 **ARTICLE VI**
462 **Landscape Standards**
463

464 **Nothing** shall be erected on any Tract that is not in strict compliance with Article XI.
465

466 **Section 1. Landscaping and Lawn Seeding.** No Owner shall be allowed to
467 plant trees, landscape or do any gardening in any of the Common Areas, except with
468 express permission from the Board. Each Tract Owner shall provide reasonable
469 landscaping on his Tract including, at a minimum, suitable foundation landscaping. All
470 landscaping plans are subject to Architectural Control Committee approval in

471 accordance with the guidelines and procedures promulgated by the Architectural
472 Control Committee. The Architectural Control Committee may, in its discretion, modify
473 such plans to promote the integrity and the aesthetic appearances of this subdivision.
474 Finished grading of all yards must be completed within 15 days after the dwelling is
475 constructed, weather permitting, and all yards must be seeded or sodded with grass
476 within ten days after the completion of finish grading, weather permitting. Trees
477 provided by Declarant, if any, will be protected by Owner during construction and
478 replaced within 30 days if damaged or if a tree dies on Owner's Tract.
479

480 **Section 2. Landscape Easements.** There are strips and areas of ground shown
481 and marked "Landscape Easement" on the Final Plat for the Real Estate which are
482 hereby reserved for the use of owners of Tracts to the extent and limited for the
483 purposes set forth in the Declaration and for the use of Declarant and Association for
484 the installation, maintenance, repair and replacement of landscaping, other screening
485 material, street directories, street signs, and other items requiring maintenance. Except
486 as installed and maintained by Tract owners, pursuant to the requirements of the
487 Declarations, or by Declarant and the Association, no permanent or other structure
488 (except walls, sidewalks and fences otherwise permitted hereby or by the Declaration
489 and approved by the Architectural Control Committee) shall be erected or maintained
490 on said strips and areas by the owner of any Tract subject to any such "Landscape
491 Easement," and the owners of such Tracts affected by any such "Landscape Easement"
492 shall take and hold title to their Tracts subject to the foregoing rights of the Declarant
493 and the Association and shall not do or permit to be done anything which will obstruct
494 or interfere with or remove any installations or landscaping made by the Declarant or
495 Association in any such "Landscape Easement." The foregoing grant of rights to the
496 Declarant shall not impose an obligation on the Declarant to undertake such
497 maintenance unless it elects to do so. (R)

498
499 **Section 3. Tree Removal.** No trees shall be removed, unless approved in
500 accordance with Article XI of this Declaration or, except for diseased or dead trees
501 needing to be removed to promote the growth of other trees, or to what is necessary to
502 place structures upon the tract, and safety in occupancy of the Tract. In the event of an
503 intentional or unintentional violation of this Section, the violator may be required by the
504 Architectural Control Committee to replace the removed tree with one (1) or more trees
505 of such size and number, and in such locations, as the Architectural Control Committee
506 may determine in its sole discretion.
507

508 **Section 4. Unwooded tracts.** Three (3) hardwood trees of the type, size, and
509 location as approved by the Architectural Control Architectural Control Committee shall
510 be provided, and maintained, in the front yard of each dwelling on unwooded Tracts, by
511 the Tract Owners. Four (4) Pine trees, six (6) feet tall, shall be planted and maintained
512 at the rear of each unwooded tract, but not within utility easement areas unless
513 approved by utility companies. Undesirable trees such as but not limited to silver
514 maple, sumac, cottonwood, and some species of locust shall not be planted.

Section 5. Wooded tracts. Wooded Tracts (tracts 5,6,7,8 Section1) are to be left in their natural state. Grassy areas may be established and maintained within forty (40) feet of Dwelling or Accessory Buildings, and within five (5) feet of driveways. Transmission Line easement areas are to be maintained as grassy areas. Removal of any vegetation and fallen leaves is forbidden except; limbs, briarbrushes, vines, poisonous plants, dead unsafe or fallen trees, and yard debris in grassy areas,. Undesirable trees such as but not limited to silver maple, sumac, cottonwood, and some species of locust are to be removed. All weeds growing on tract are to be mowed or eradicated. Owners to replace any trees that are damaged the next planting season. No removal of timber for commercial sale shall be allowed.

**ARTICLE VII
Use Standards**

Nothing shall be erected or on a tract that is not in strict compliance with Article XI.

Section 1. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of Section One (1) of Auburn Ridge, except that dogs, cats or other usual and common household pets not to exceed a total of four (4) may be permitted on a Tract. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Tracts or the owner of any portion of the Properties shall be removed from the Properties upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose on any portion of Section One (1) of Auburn Ridge. Dogs shall at all times whenever they are outside a Tract be confined on a leash held by a responsible person. Pet litter deposited on property other than pet owner's must be picked up by pet owner immediately after deposit. Variance from the above animal restrictions for Tract owners of five (5) acres may be granted by the Architectural Control Committee.

Section 2. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Tract, without the prior written consent of the Board or its designee. Notwithstanding the foregoing, the Declarant, its nominees, successors or assigns shall have the right, without obligation, to erect an aerial or satellite dish, or install other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties. Satellite dishes no greater in size than 30" in diameter are permitted on the Properties so long as they are on the side or rear of a Dwelling Unit or screened from street view.

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Section 3. Auto Mechanics. Except for minor or routine repair and maintenance of the owners' personal vehicles, no welding, restoration, reconstruction, overhauling, painting or other type of auto mechanics, whether for hire or otherwise, shall be permitted.

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Section 4. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article XI of this Declaration.

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Section 5. Business Use. No trade or business may be conducted in or from any Tract, except that an Owner or occupant of a Tract may conduct business activities within the Dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

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The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Tract shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Tracts which such entity owns within the Properties.

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Section 6. Declarant's and the Association's Right to Perform Certain

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Maintenance and Removal. In the event that any Owner of a Tract shall fail to maintain his Tract and any improvements, or remove any unauthorized item or structure, situated thereon in accordance with the provisions of these Restrictions and the provisions of any recorded plat of the Real Estate, the Declarant, until the Applicable Date, and, thereafter, the Association through its agents and employees or contractors, should have the right to enter upon said Tract and repair, mow, clean, remove or perform such other acts as may be reasonably necessary to make such Tract and improvements situated thereon, if any, conform to the requirements of these

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602 Restrictions and the provisions contained in any such plat. The cost thereof to the
603 Declarant or the Association shall be collected as a special assessment against such
604 Owner and his Tract in the manner provided for herein for the collection of Common
605 Expenses. Neither the Declarant nor the Association, nor any of its agents, employees
606 or contractors, shall be liable for any damage which may result from any maintenance
607 work performed hereunder.

608

609 **Section 7. Ditches and Swales and Erosion Control.** It shall be the duty of the
610 Owner of any Tract on which any part of an open storm drainage ditch or swale is
611 situated to keep such portion thereof as may be situated upon his Tract continuously
612 unobstructed (both by improvements and plant material) and in good repair, and to
613 provide for the installation of such culverts upon said Tract as may be reasonably
614 necessary. It shall be the duty of the Owner of any Tract to establish as needed and to
615 maintain all erosion control on his or her respective Tract.

616

617 **Section 8. Drainage Easements.** If terrain dictates, there is hereby created
618 along the boundaries of each tract an open storm drainage easement twenty (20) feet
619 in width. There are undefined areas on the Real Estate where drainage of water
620 naturally occurs. These areas are hereby dedicated as easements for drainage of
621 water. No structure shall be erected or maintained within such areas and drainage
622 shall not be restricted. Maintenance is the responsibility of the tract owner. Filling or
623 hindering in any way flow of water in these areas is prohibited. Each tract owner shall
624 maintain the street swale, including mowing grass, in a condition such that the flow of
625 water within the swale is not impeded.

626

627 **Section 9. Drilling and Mining.** No mining oil or water drillings, oil development
628 operations, oil refining, quarries or mining operations of sand, gravel, stone, shale, dirt,
629 or other material or mineral shall be permitted upon or in any Tract, nor shall oil wells,
630 tanks, tunnels, mineral excavations or shafts be permitted upon or in any Tract. No
631 derrick or other structure designed for use in boring for oil, water or natural gas shall be
632 erected, maintained or permitted on any Tract.

633

634 **Section 10. Energy Conservation Equipment.** No solar energy collector
635 panels or attendant hardware or other energy conservation equipment shall be
636 constructed or installed on any Tract unless it is an integral and harmonious part of the
637 architectural design of a structure, as determined in the sole discretion of the
638 Architectural Control Committee pursuant to Article XI of this Declaration.

639

640 **Section 11. Fences.** No hedges, walls, dog runs, animal pens or fences shall be
641 erected until approval is obtained from the Architectural Control Committee as to type,
642 location and height. Black wrought iron is the preferred fence material, but if chain link
643 fencing is used, it must be black. **Wood Privacy fencing of any kind is forbidden.** No
644 fence shall be erected closer to the road than the back of the dwelling structure.
645 Maximum height of any fence shall be forty eight (48) inches, except for fences around

646 patios or pools which may be a up to seventy two (72) inches in height. All fencing is to
647 be erected reasonably so as to enclose the property and decorate the same without
648 hindrance or obstruction of any other property. All fences shall be maintained in good
649 repair. Variances from the above fence restrictions for Tract owners of more than five
650 (5) acres may be granted by the Architectural Control Committee.
651

652 **Section 12. Firearms.** The discharge of firearms is prohibited. The term
653 "firearms" includes bows and arrows, slingshots "B-B" guns, pellet guns, and other
654 firearms of all types, regardless of size. Notwithstanding anything to the contrary
655 contained herein or in the Bylaws, the Association shall not be obligated to take action
656 to enforce this Section.
657

658 **Section 13. Garage Sales.** Garage sales, moving sales, rummage sales and the
659 like shall not be held on any Tract, except that the Homeowners association or
660 Declarant may designate no more than two (2) weekends each calendar year in which
661 garage sales may be held.
662

663 **Section 14. Insurance Impact.** Nothing shall be done or kept by an Owner in
664 any Dwelling Unit, or on any Tract, or on any of the Common Areas which will cause an
665 increase in the rate of insurance on the other Tracts or Common Areas of the Real
666 Estate, or which would be in violation of any law or ordinance or the requirements of
667 any insurance underwriting or rating bureau.
668

669 **Section 15. Lighting.** Except for seasonal Christmas decorative lights, which
670 may be displayed between Dec. 1 and Jan. 10 only, all exterior lights must be approved
671 in accordance with Article XI of this Declaration. Sodium, halogen, or incandescent
672 lighting shall be used for exterior lighting.
673

674 **Section 16. Mailboxes.** Architectural Control Committee shall specify size,
675 type, color, post style and location of all mailboxes.
676

677 **Section 17. Maintenance of Improved Tracts.** It shall be the responsibility of
678 each Owner to prevent the development of any unclean, unhealthy, unsightly, or
679 unkempt condition on his or her Tract. The pursuit of hobbies or other activities,
680 including specifically, without limiting the generality of the forgoing, the assembly and
681 disassembly of motor vehicles and other mechanical devices, which might tend to
682 cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken
683 on any part of the Properties. No waste shall be committed in any Dwelling or on any
684 Tract. Each Owner shall:
685

- 686 a. Mow the Tract at such times as may be reasonably required in order to
687 keep the grass no longer than five inches and prevent the unsightly
688 growth of vegetation and noxious weeds. Variance may be granted by the

689 Architectural Control Committee for Tracts larger than five (5) acres from
690 the above mowing requirements on portions of the Tract;

- 691 b. Remove all debris or rubbish.
- 692 Prevent the existence of any other condition that reasonably tends to
- 693 detract from or diminish the aesthetic appearance of the Real Estate;
- 694 c. Cut down and remove dead trees, or any tree that creates a hazard;
- 695 d. Where applicable, prevent debris and foreign material from entering
- 696 drainage areas; and
- 697 e. Keep the exterior of all improvements in such a state of repair or
- 698 maintenance as to avoid their becoming unsightly.
- 699

700 **Section 18. Maintenance of Vacant Tracts.** Vacant Tracts shall be maintained
701 per the following terms; No trash shall be allowed to accumulate. In grassy areas
702 vegetation shall not be allowed to grow in excess of twelve (12) inches in height.
703 Unsold tracts shall be mowed and maintained by the Declarant. If sold Tracts are not
704 mowed and maintained, the Declarant, until the Applicable Date, and, thereafter, the
705 Association shall have the option to mow, or maintain the Tract, by removing trash or
706 debris and charge the Owner a reasonable fee. Variance may be granted by the
707 Architectural Control Committee for Tracts larger than five (5) acres from the above
708 mowing requirements on portions of the Tract

709
710 **Section 19. Model Homes.** No Owner of any Tract shall build or permit the
711 building upon his Tract, any dwelling house that is to be used as a model home or
712 exhibit house without permission to do so from the Declarant.
713

714 **Section 20. Non-applicability to Association.** Notwithstanding anything to the
715 contrary contained herein, the covenants and restrictions set forth in Articles 4,5,6 and
716 7 shall not apply to or be binding upon the Association in its ownership, management,
717 administration, operation, maintenance, repair, replacement and upkeep of the
718 Common Areas to the extent the application thereof could or might hinder, delay or
719 otherwise adversely affect the Association in the performance of its duties, obligations
720 and responsibilities as to the Common Areas.
721

722 **Section 21. Occupancy and Residential Use of Partially Completed**
723 **Dwelling House Prohibited.** No Dwelling Unit constructed on any of the Tracts shall
724 be occupied or used for residential purposes or human habitation until it shall have
725 been substantially completed. The determination of whether the Dwelling Unit shall
726 have been substantially completed shall be made by the Architectural Control
727 Committee and such decision shall be binding on all parties.
728

729 **Section 22. Occupants Bound.** All provisions of the Declaration, Bylaws and of
730 any rules and regulations or use restrictions promulgated pursuant thereto which
731 govern the conduct of Owners and which provide for sanctions against Owners shall
732 also apply to all occupants, guests and invitees of any Owner. Every Owner shall cause

733 all occupants of his or her Tract to comply with the Declaration, Bylaws and the rules
734 and regulations adopted pursuant thereto, and shall be responsible for all violations
735 and losses to the Common Areas caused by such occupants, notwithstanding the fact
736 that such occupants of a Tract are fully liable and may be sanctioned for any violation
737 of the Declaration, Bylaws and rules and regulations adopted pursuant thereto.
738

739 **Section 23. Other Exterior Attachments.** No Owner shall cause or permit
740 anything to be hung or displayed on the outside of the windows of his or her Dwelling
741 Unit or Accessory Building or placed on the outside walls of any building, and no
742 awning, canopy, shutter or other attachment or thing shall be affixed to or placed upon
743 exterior walls or roofs or any other parts of any building without the prior consent of the
744 Architectural Control Committee unless otherwise expressly authorized herein, or in
745 any recorded subdivision plat, or by the rules, regulations and guidelines of the
746 Architectural Control Committee.
747

748 **Section 24. Outside Storage.** No outside storage of equipment, materials,
749 supplies, debris and unlicensed or inoperative vehicles, (including recreational
750 vehicles, boat, trailers, motorcycles or any other motorized or unmotorized equipment)
751 shall be permitted.
752

753 **Section 25. Parking.** Vehicles shall be parked only in the garages or driveways
754 serving the Tracts. Parking is allowed on dedicated streets only when an Owner has a
755 social function and the invited guests will not be able to park on such Owner's Tract.
756 No overnight parking shall be permitted on any Private Roadway.
757

758 **Section 26. Prohibited Vehicles.** Commercial vehicles, vehicles with
759 commercial writing on their exteriors, vehicles primarily used or designed for
760 commercial purposes, tractors, mobile homes, recreational vehicles, trucks weighing in
761 excess of three-quarters of a ton (¾), trailers (either with or without wheels), campers,
762 camper trailers, boats and other watercraft and boat trailers shall be parked only in
763 enclosed garages. Stored vehicles and vehicles which are either obviously inoperable
764 or do not have current operating licenses shall not be permitted on the Properties
765 except within enclosed garages. For purposes of this Section, a vehicle shall be
766 considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on
767 blocks or so covered for fourteen (14) consecutive days without the prior approval of
768 the Board. Notwithstanding the foregoing, service and delivery vehicles may be
769 on the Properties for such period of time as is reasonably necessary to provide service
770 or to make a delivery to a Tract. Any vehicle parked in violation of this Section or
771 parking rules promulgated by the Board may be towed in accordance with the Bylaws.
772

773 **Section 27. Playground.** Any playground or other play areas or equipment
774 furnished by the Association or erected within the Properties shall be used at the risk of
775 the user, and the Association shall not be held liable to any Person for any claim,
776 damage, or injury occurring thereon or related to use thereof. No playground

equipment, tree houses, or similar structures shall be erected on any Tract without prior approval pursuant to Article XI hereof; provided, however, children's play equipment such as sandboxes, swing and slide, and tents shall not require approval by the Architectural Control Committee provided such equipment is not more than eight (8) feet high, maintained by the Tract owner in good repair (including painting) and every reasonable effort has been made by the Tract owner to screen or shield such equipment from view of adjacent Tract owners. Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Architectural Control Committee.

Section 28. Quiet Enjoyment. No portion of the Properties shall be used, in whole or in part, for the storage or any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties. For greater clarification, no Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners or allow any such noise or disturbance to be made on his or her Tract, including any amplifiers or other machines or equipment. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way obnoxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.

Section 29. Refuse Disposal. No rubbish, garbage or other waste shall be allowed to accumulate or be buried on any tract and;

- a. Trash, garbage or other wastes shall be kept in sanitary animal proof containers and collected weekly by a Refuse Company contracted by the Association. Fees for the Refuse Company's services to be billed and paid by each Tract owner. All equipment for the storage of such materials shall be kept in a clean and sanitary condition.
- b. **No outside burning of wood (except for food preparation campfires), leaves, trash, garbage or household refuse shall be permitted within the Properties.**

Section 30. Residential Use. The Properties shall be used only for single family residential purposes; provided, however, that such restriction shall not apply to any Tract or part thereof or any other part of the Properties at any time owned by the Association which constitutes a part of the Common Areas and upon which no Dwelling Unit is located.

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820 **Section 31. Renting Dwellings.** No Owner may rent or lease his dwelling for
821 transient or hotel purposes. Any Owner who leases a dwelling unit shall lease the
822 entire dwelling to only one (1) family and shall have a written one year lease which
823 shall provide that the lease is subject to the provisions of the Declaration and any
824 failure of the lease to comply with the terms of the Declaration shall be a default under
825 the lease. Signs advertising the property for rent are specifically prohibited.
826

827 **Section 32. Sales Office.** To the extent deemed necessary or desirable by
828 Declarant, Declarant shall be permitted to place sales offices and construction and
829 storage facilities for uses attributable to the construction, development, marketing and
830 maintenance of the subdivision on any unsold Tract or on any Common Area in the
831 subdivision until 180 days following the sale, closing and deed transfer to a Tract
832 owner other than Declarant of the last Tract in the subdivision.
833

834 **Section 33. Storage tanks.** No bulk storage tanks of any kind will be allowed.
835

836 **Section 34. Signs.** The Declarant and/or Association shall approve all signs
837 deemed appropriate by the Architectural Control Committee advertising properties for
838 sale, which signs shall be uniform in design and placed as the Architectural Control
839 Committee shall determine proper. No sign of any kind shall be erected within the
840 Properties without the written consent of the Architectural Control Committee, except
841 entry and directional signs installed by Declarant and such signs as may be required by
842 legal proceedings. If permission is granted to any Person to erect a sign within the
843 Properties, the Committee reserves the right to restrict the size, color, lettering and
844 placement of such sign. The Board of Directors or Declarant shall have the right to
845 erect signs as they, in their discretion, deem appropriate. **Signs advertising property
846 for rent are specifically prohibited.** Violation of this sign restriction will result in Fifty
847 Dollars (\$50.00) per day liquidated damages payable to the Declarant until such time
848 as the Association owns and is responsible for the maintenance of the Common Areas,
849 at which time such liquidated damages shall be payable to the Association. This
850 covenant has no application to marketing or promotional signs of the Declarant while
851 Tracts are being sold in this section or subsequent sections of Auburn Ridge.
852

853 **Section 35. Swimming Pools.** Swimming pools must have the approval of the
854 Architectural Control Committee before any work is undertaken. No above ground
855 swimming pools shall be allowed, provided nothing herein shall preclude installation
856 and use of hot tubs, spas, Jacuzzis or similar apparatus with prior approval of the
857 Architectural Control Committee. Permanent backyard pools will be approved by the
858 Architectural Control Committee only after careful consideration of the potential effect
859 of such a pool in neighboring properties. An application for the construction of a
860 swimming pool will not be considered unless the application is accompanied by an
861 application for acceptable fence or other safety protection and landscape design
862 approval. The design of such fence shall conform to county or municipal regulations for

863 such fencing. Use of plantings in the vicinity of the proposed pool may be required to
864 soften the effect of sound and required pool fencing on adjacent properties.
865

866 **Section 36. Tennis Courts, Racquetball Courts, Paddle Ball Courts,**
867 **Basketball Goals, Etc.** Tennis courts, racquetball courts, paddle ball courts, squash
868 courts, and other recreational or sporting facilities will be approved by the Architectural
869 Control Committee only after thorough consideration of the potential effect of such a
870 structure or use in neighboring properties. The Architectural Control Committee will not
871 approve non-baffled lighted courts or facilities. An application for the construction of
872 any such facility will not be considered unless the application is accompanied by an
873 application for an acceptable fence and landscape design approval. It is recommended
874 by the Architectural Control Committee that any such fencing be of an open
875 composition in order to blend in with the surrounding properties and soften the effect on
876 adjacent properties.
877

878 All basketball courts or any other fixed games and play structures shall be
879 located behind the rear foundation line of the main structure and within Tract set-back
880 lines unless otherwise approved by the Architectural Control Committee. Basketball
881 goals may be placed along driveways, but the Architectural Control Committee
882 reserves the right to approve or disapprove the location and type.
883

884 **Section 37. Tents, Trailers and Temporary Structures.** Except as may be
885 permitted by the Declarant or the Architectural Control Committee during initial
886 construction within the Properties, no tent, utility shed, shack, trailer or other structure
887 of a temporary nature shall be placed upon a Tract or the Common Areas.
888 Notwithstanding the above, party tents or similar temporary structures may be erected
889 for special events for a period of not longer than seventy two (72) hours unless
890 otherwise consented to by the Board of Directors or the Declarant.
891

892 **Section 38. Utility Lines & Utility Easements.** No overhead utility lines,
893 including lines for cable television, shall be permitted within the Properties, except for
894 temporary lines as required during construction and high voltage lines if required by
895 law or for safety purposes. Areas designated as utility easements on this plat are
896 dedicated as easements for the installation and maintenance of public utility
897 equipment, such as lines, ducts, gas or water mains or sewer mains and laterals,
898 electric lines, telephone lines and cable television lines, not including transportation
899 and transmission company lines. No structures shall be erected on or maintained within
900 such areas. Utility easements dedicated to cross country transmission and pipe lines
901 are not governed by these covenants and restrictions, but are governed, controlled,
902 and restricted by other documents. Maintenance of these easement areas are the
903 responsibility of the owner.
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905 **Section 40. Future Section use.** Future Sections of Auburn Ridge may or may
906 not have commercial farm operations. Property described in exhibit "B" and Future

Sections may use this Section's roadways for ingress and egress of commercial farm operations, and items in Article VII Sections eleven (11), twelve (12), twenty four (24), twenty six (26), and twenty nine (29) b. above may or may not apply to property described in exhibit "B" and future Sections of Auburn Ridge.

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ARTICLE VIII

Association; Membership; Voting; Functions

Section 1. Membership in Association. Declarant and each owner of a Tract in this section of Auburn Ridge, and property described in Exhibit "B" shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member until such time as his ownership of a Tract ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Tract; provided, however, that any Person who holds the interest of an Owner in a Tract merely as security for the performance of an obligations shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Association.

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Section 2. Voting Rights. The Association shall have the following classes of membership, with the following voting rights:

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(a) **Class A.** Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to one (1) vote for each Tract of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Tract, all such Persons shall be members of the Association, but all of such Persons shall have only one (1) vote for such Tract, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Tract.

(b) **Class B.** Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled to ten (10) votes for each Tract of which it is the Owner and ten (10) votes for each single numbered parcel of land shown upon, and identified as a Tract on, any recorded subdivision plat of the Real Estate of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Tract" as defined in this Declaration, on all matters requiring a vote of the members of the Association. The Class B membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B

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950 members as such is delivered to the resident agent of the Association, or (ii)
 951 the date Declarant no longer owns any Tracts nor any portion of any single
 952 numbered parcel of land shown upon, and identified as a Tract on, any
 953 recorded subdivision plat of the Properties, nor any property adjacent to the
 954 Properties intended to become a future section of Auburn Ridge Subdivision
 955 (the applicable date being herein referred to as the "Applicable Date"). After
 956 the Applicable Date, Class B memberships shall be converted to Class A
 957 memberships, and each former Class B member shall be entitled to one (1)
 958 Class A membership for each Tract owned and for each single numbered
 959 parcel of land shown upon, and identified as a Tract on, any recorded
 960 subdivision plat of the Properties of which it is then the Owner (either as to
 961 the entire numbered parcel or any part thereof) which is not a "Tract" as
 962 defined herein.
 963

964 **Section 3. Functions.** The Association has been (or will be) formed for the
 965 purpose of providing for the maintenance, repair, replacement, administration,
 966 operation and ownership of the Common Areas as and to the extent provided herein, to
 967 pay taxes assessed against and payable with respect to the Common Areas, to pay any
 968 other necessary expenses and costs in connection with Common Areas, and to perform
 969 such other functions as may be designated for it to perform under this Declaration.
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971 **ARTICLE IX**
 972 **Board of Directors**
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 975 **Section 1. Management.** The business and affairs of the Association shall be
 976 governed and managed by the Board of Directors. No person shall be eligible to serve
 977 as a member of the Board of Directors unless he is, or is deemed in accordance with
 978 this Declaration to be, an Owner, or a person appointed by Declarant as provided in
 979 Section 2 of this Article.
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981 **Section 2. Initial Board of Directors.** The initial Board of Directors shall be
 982 composed of the persons designated or to be designated, in the Articles, to-wit: Jerry
 983 Hillenburg (herein referred to as the "Initial Board"), who has been or shall be
 984 appointed by Declarant. Notwithstanding anything to the contrary contained in, or any
 985 other provision of, this Declaration, the Articles, the Bylaws or the Act (a) the Initial
 986 Board shall hold office until the first annual meeting of the members of the Association
 987 occurring on or after the Applicable Date, and (b) in the event of any vacancy or
 988 vacancies occurring in the Initial Board for any reason or cause whatsoever prior to
 989 such first annual meeting occurring on or after the Applicable Date determined as
 990 provided above, every such vacancy shall be filled by a person appointed by Declarant,
 991 who shall thereafter be deemed a member of the Initial Board. Each Owner, by
 992 acceptance of a deed to a Tract, or by acquisition of any interest in a Dwelling Unit by

any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original member thereof or as a member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a member of the Association nor an Owner of the Tract for any other purpose (unless he is actually the Owner of a Tract and thereby a member of the Association).

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Section 3. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Tract or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

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Section 4. Term of Office and Vacancy. Subject to the provisions of Section 2 of this Article, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

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Section 5. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners or until his successor is duly elected and qualified.

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1037 **Section 6. Duties of the Board of Directors.** The Board of Directors shall be
1038 the governing body of the Association representing all of the Owners and being
1039 responsible for the functions and duties of the Association, including but not limited to,
1040 providing for the administration of the Real Estate, the management, maintenance,
1041 repair, upkeep and replacement of the Common Areas, and Private Roadways (unless
1042 the same are otherwise the responsibility or duty of Owners), and the collection and
1043 disbursement of the Common Expenses. After the Applicable Date, the Board may
1044 employ a Managing Agent upon such terms as the Board shall find, in its discretion,
1045 reasonable and customary. The Managing Agent, if one is employed, shall assist the
1046 Board in carrying out its duties, which include, but are not limited to:

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- 1048 (a) protection, surveillance and replacement of the Common Areas, and
1049 Private Roadways are otherwise the responsibility or duty of Owners of
1050 Tracts; provided, however, that this duty shall not include or be deemed or
1051 interpreted as a requirement that the Association, the Board or any Managing
1052 Agent must provide any on-site or roving guards, security service or security
1053 system for protection or surveillance, and the same need not be furnished.
1054 (b) procuring of utilities used in connection with the Tracts, Dwelling Units
1055 and Common Areas (to the extent the same are not provided and billed
1056 directly to Owners of Tracts and Dwelling Units by utility companies);
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- 1058 (c) landscaping, painting, decorating, furnishing, and maintenance and
1059 upkeep of, the Common Areas;
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- 1061 (d) maintenance and upkeep of Private Roadways, assessment and
1062 collection from the Owners of the Owners' ^(R) respective share of the Common
1063 Expenses;
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- 1065 (e) preparation of the proposed annual budget, a copy of which will be mailed
1066 or delivered to each Owner at the same time as the notice of the annual or
1067 special meeting at which the same is to be acted upon, is mailed or delivered;
1068
- 1069 (f) preparing and delivering annually to the Owners a full accounting of all
1070 receipts and expenses incurred in the prior year; if possible, such accounting
1071 shall be delivered to each Owner simultaneously with delivery of the
1072 proposed annual budget for the current year;
1073
- 1074 (g) keeping a current accurate and detailed record of receipts and
1075 expenditures affecting the Common Areas and Private Roadways, and the
1076 business and affairs of the Association, specifying and itemizing the Common
1077 Expenses; all records and vouchers shall be available for examination by an
1078 Owner at any time during normal business hours;
1079

- 1080 (h) procuring and maintaining for the benefit of the Association, the Owners,
 1081 any Managing Agent and the Board the insurance coverage required under
 1082 this Declaration and such other insurance coverage as the Board, in its sole
 1083 discretion, may deem necessary or advisable;
 1084
- 1085 (i) paying taxes and assessments assessed against and payable with
 1086 respect to the Common Areas and paying any other necessary expenses and
 1087 costs in connection with the Common Areas and Private Roadways.
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1089 **Section 7. Powers of the Board of Directors.** The Board of Directors shall
 1090 have such powers as are reasonable and necessary to accomplish the performance of
 1091 their duties. These powers include, but are not limited to, the power:
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- 1093 (a) to employ a Managing Agent to assist the Board in performing duties;
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- 1095 (b) to purchase, lease or otherwise obtain for the Association, to enable it to
 1096 perform its functions and duties, such equipment, materials, labor and
 1097 services as may be necessary in the judgment of the Board of Directors;
 1098
- 1099 (c) to employ legal counsel, architects, contractors, accountants and others
 1100 as in the judgment of the Board of Directors may be necessary or desirable in
 1101 connection with the business and affairs of the Association;
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- 1103 (d) to employ, designate, discharge and remove such personnel as in the
 1104 judgment of the Board of Directors may be necessary for the maintenance,
 1105 upkeep, repair and replacement of the Common Areas and private roadways,
 1106 and to perform all other maintenance, upkeep, repair and replacement duties
 1107 of the Association and the Board;
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- 1109 (e) to include the costs of performing all of its functions, duties and
 1110 obligations as Common Expenses and to pay all of such costs therefrom;
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- 1112 (f) to open and maintain a bank account or accounts in the name of the
 1113 Association;
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- 1115 (g) to promulgate, adopt, revise, amend and alter from time to time such
 1116 additional rules and regulations with respect to use, occupancy, operation
 1117 and enjoyment of the Real Estate, the Common Areas, and the Private
 1118 Roadways (in addition to those set forth in this Declaration) as the Board, in
 1119 its discretion, deems necessary or advisable; provided, however, that copies
 1120 of any such additional rules and regulations so adopted by the Board shall be
 1121 promptly delivered to all Owners; and
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1123 (h) to grant to such public or private companies, entities or bodies as the
 1124 Board may approve, such easements as may be necessary to provide the
 1125 Tracts, Dwelling Units and Common Areas with facilities for utility and similar
 1126 services, including but not limited to cable television facilities and service;
 1127 provided that such easements are located within or are coextensive with any
 1128 one or more utility easements, or Common Areas shown upon, and identified
 1129 as such on, or provided for in, any subdivision plat of the Real Estate,
 1130 whether such plat is heretofore or hereafter recorded.
 1131

1132 **Section 8. Limitation on Board Action.** After the Applicable Date, the authority
 1133 of the Board to enter into contracts shall be limited to contracts involving a total
 1134 expenditure of less than \$2,000.00 per year (adjusted annually for increases or
 1135 decreases in the Consumer Price Index) without obtaining the prior approval of a
 1136 majority of the cumulative vote of the Owners, except that in the following cases such
 1137 approval shall not be necessary:
 1138

- 1139 (a) contracts for replacing or restoring portions of the Common Areas and
 1140 Private Roadways destroyed by fire or other casualty where the cost thereof
 1141 is payable out of insurance proceeds actually received or for which the
 1142 insurance carrier has acknowledged coverage;
 1143
- 1144 (b) proposed contracts and proposed expenditures expressly set forth in the
 1145 proposed annual budget as approved by the Owners at the annual meeting;
 1146 and
 1147
- 1148 (c) expenditures necessary to deal with emergency conditions in which the
 1149 Board of Directors reasonably believes there is insufficient time to call a
 1150 meeting of the Owners.
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1152 **Section 9. Compensation.** No Director shall receive any compensation for his
 1153 services as such except to such extent as may be expressly authorized by a majority
 1154 vote of the Owners. The Managing Agent, if any is employed, shall be entitled to
 1155 reasonable compensation for its services, the cost of which shall be a Common
 1156 Expense.
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1158 **Section 10. Non-Liability of Directors.** The Directors shall not be liable to the
 1159 Owners or any other Persons for any error or mistake of judgment exercised in carrying
 1160 out their duties and responsibilities as Directors, except for their own individual willful
 1161 misconduct, bad faith or gross negligence. The Association shall indemnify and hold
 1162 harmless and defend each of the Directors against any and all liability to any person,
 1163 firm or corporation arising out of contracts made by the Board on behalf of the
 1164 Association, unless any such contract shall have been made in bad faith. It is intended
 1165 that the Directors shall have no personal liability with respect to any contract made by
 1166 them on behalf of the Association.

1167 **Section 11. Additional Indemnity of Directors.** The Association shall
 1168 indemnify, hold harmless and defend any Person, his heirs, assigns and legal
 1169 representatives, made a party to any action, suit or proceeding by reason of the fact
 1170 that he is or was a Director of the Association, against the reasonable expenses,
 1171 including attorneys' fees, actually and necessarily incurred by him in connection with
 1172 the defense of such action, suit or proceeding that such Director is liable for gross
 1173 negligence or misconduct in the performance of his duties. The Association shall also
 1174 reimburse to any such Director the reasonable costs of settlement of or judgment
 1175 rendered in any action, suit or proceeding, if it shall be found by a majority vote of the
 1176 Owners that such Director was not guilty of gross negligence or misconduct. In making
 1177 such findings and notwithstanding the adjudication in any action, suit or proceeding
 1178 against a Director, no Director shall be considered or deemed to be guilty of or liable
 1179 for negligence or misconduct in the performance of his duties where, acting in good
 1180 faith, such Director relied on the books and records of the Association or statements or
 1181 advice made by or prepared by the Managing Agent (if any) or any officer or employee
 1182 thereof, or any accountant, attorney or other person, firm or corporation employed by
 1183 the Association to render advice or service unless such Director had actual knowledge
 1184 of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable
 1185 for negligence or misconduct by virtue of the fact that he failed or neglected to attend a
 1186 meeting or meetings of the Board of Directors.

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 1188 **Section 12. Bond.** The Board of Directors may provide surety bonds and may
 1189 require the Managing Agent (if any), the treasurer of the Association, and such other
 1190 officers as the Board deems necessary, to provide surety bonds, indemnifying the
 1191 Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful,
 1192 abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums
 1193 and with such sureties as may be approved by the Board of Directors and any such
 1194 bond shall specifically include protection for any insurance proceeds received for any
 1195 reason by the Board. The expense of any such bonds shall be a Common Expense.

1196
 1197 **Section 13. Initial Management.** Notwithstanding anything to the contrary
 1198 contained in this Declaration, Declarant shall have, and Declarant hereby reserves to
 1199 itself, the exclusive right to manage or designate a Managing Agent for the Real Estate
 1200 and Common Areas, and to perform all the functions of the Association, until the
 1201 Applicable Date. Declarant may, at its option, engage a Managing Agent affiliated with
 1202 it to perform such functions and, in either case, Declarant or such Managing Agent
 1203 shall be entitled to reasonable compensation for its services.

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ARTICLE X
Maintenance and Repair

1209 **Section 1. By Owner.** Each Owner shall be reasonable for, if the need therefor
 1210 arises, all maintenance, repairs, decoration and replacement of his own Structures.

1211 both interior and exterior. In addition, each Owner shall furnish and be responsible for
1212 the maintenance of all portions of his Tract, except for such portions thereof as may, in
1213 accordance with the terms of this Declaration, be designated as a part of the Common
1214 areas for purposes of maintenance only. All fixtures and equipment installed within or
1215 as part of a Structure, commencing at the points where the utility lines, pipes, wires,
1216 conduits or systems branch off the main line at the meter base, shall be maintained and
1217 kept in repair by the Owner thereof. Each Owner shall promptly perform all
1218 maintenance and repair of his Tract and Structures which, if neglected, might adversely
1219 affect any other Tract or Structure or any part of the Common Areas. Such maintenance
1220 and repairs include but are not limited to internal water lines, plumbing, electric lines,
1221 gas lines, appliances and other fixtures, equipment and accessories belonging to the
1222 Owner and a part of or appurtenant to his Structures or Tract.
1223

Section 2. By the Association. Maintenance, repairs, replacements and
1224 upkeep of the Common Areas shall (except to the extent provided herein as the
1225 obligation of Owners) be furnished by the Association, as a part of its duties, and the
1226 cost thereof shall constitute a part of the Common Expenses.
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The Board of Directors may adopt such other rules and regulations concerning
1228 maintenance, repair, use and enjoyment of the Common Areas as it deems necessary,
1229 provided that the same are not inconsistent with the express provisions of this
1230 Declaration.
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Notwithstanding any obligation or duty of the Association to repair or maintain
1232 any of the Common Areas (or items deemed Common Areas for purposes of
1233 maintenance), if, due to the willful, intentional or negligent acts or omissions of an
1234 Owner or of a member of his family or of a guest, tenant, invitee or other occupant or
1235 visitor of such Owner, damage shall be caused to the Common Areas (or items deemed
1236 as such for purposes of maintenance), or if maintenance, repairs or replacements shall
1237 be required thereby which would otherwise be at the Common Expense, then such
1238 Owner shall pay for such damage and such maintenance, repairs and replacements, as
1239 may be determined by the Association, unless such loss is covered by the
1240 Association's insurance with such policy having a waiver of subrogation clause. If not
1241 paid by such Owner upon demand by the Association, the cost of repairing such
1242 damage shall be added to and become a part of the assessment to which such Owner's
1243 Tract is subject.
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The authorized representatives of the Association, the Board and the Managing
1245 Agent for the Association (if any) shall be entitled to reasonable access to any Tracts
1246 as may be required in connection with maintenance, repairs or replacements of or to
1247 the Common Areas and items deemed as Common Areas for purposes of maintenance,
1248 including, but not limited to, access to any easements reserved, granted or created by
1249 any subdivision plat of any portion of the Real Estate for such purposes.
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ARTICLE XI
Architectural Control

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Nothing, including any fence, deck, dock, recreational equipment (including basketball goals), or any structure, storage shed, doghouse or other improvements, shall be erected on any Tract, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the Architectural Control Committee has been obtained pursuant to Section 1 below.

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This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

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This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land adjacent to the Real Estate or land subject to this Declaration.

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Section 1. Architectural Control Committee. There shall be, and hereby is, created and established the "Auburn Ridge Architectural Control Committee" (Architectural Control Committee) which shall have exclusive jurisdiction over all construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, the Declarant, or not more than five, nor less than three persons designated by him, shall constitute the Architectural Control Committee and shall serve at the discretion of the instrument in recordable form executed by the Declarant. After the Applicable Date, the Architectural Control Committee shall be a standing Architectural Control Committee of the Association, consisting of not more than five, nor less than three, persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the Architectural Control Committee, then the Board shall be and constitute the Architectural Control Committee.

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Section 2. Approval Process. The Architectural Control Committee has prepared and promulgated, on behalf of the Board of Directors, design and development guidelines and application and review procedures. Copies are on file in the office of the Declarant (or the Association, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Association, and the Architectural Control Committee shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and Declarants who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Properties and such Owners, builders

and developers shall conduct their operations strictly in accordance therewith. The Architectural Control Committee, or its designee, must give written approval for any building contractor selected by the Tract Owner for construction.

Prior to any construction on any Tract, the approval of the Architectural Control Committee must be obtained after written application has been made to the Architectural Control Committee by the Owner of the Tract requesting authorization from the Architectural Control Committee. Such written application shall be made in the manner and form prescribed from time to time by the Architectural Control Committee in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the Architectural Control Committee.

Section 3. Power of Disapproval. The Architectural Control Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (a) the plans are, inadequate or incomplete, or show the proposed improvements to be in violation of these Declarations, the plat restrictions or any rules, regulations or guidelines adopted by the Architectural Control Committee;
- (b) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Tract or with adjacent buildings or structures in the sole opinion of the Architectural Control Committee; or
- (c) the proposed improvement, or any part thereof, would, in the sole opinion of the Architectural Control Committee, be contrary to the interest, welfare or rights of all or part of other Owners.

Section 4. Duties of the Architectural Control Committee. The Architectural Control Committee shall approve or disapprove proposed improvements within twenty-one (21) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Architectural Control Committee for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. In the event that the Architectural Control Committee fails to approve or disapprove such plans or to request additional information reasonably required with 45 days after submission of all required or requested information, the plans shall be deemed approved.

Section 5. No Waiver of Future Approvals. The approval of the Architectural Control Committee of any proposals or plans and specifications or drawings for any

work done or proposed, or in connection with any other matter requiring the approval and consent of such Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 6. Variance. The Architectural Control Committee may authorize

variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the Architectural Control Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the Architectural Control Committee shall not be considered hardships warranting a variance.

Section 7. Compliance with Guidelines. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the Architectural Control Committee may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by Declarant or the Association.

Section 8. Non-Liability of Declarant, Architectural Control Committee.

Neither the Declarant nor the Architectural Control Committee shall be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Architectural Control Committee or the Declarant does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded plat governing the Real Estate or any applicable code, regulation or law.

Section 9. Inspection. The Architectural Control Committee and the Declarant

may inspect work being performed to assure compliance with these Restrictions, the plat restrictions and applicable regulations. However, neither the Architectural Control Committee, nor any member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Architectural Control Committee or the Declarant, shall be

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liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Architectural Control Committee or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

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Section 10. No Compensation. Neither the Architectural Control Committee nor any of its members shall be entitled to any compensation for performing its duties or obligations set forth in this declaration.

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Section 11. Rules Governing Building on Several Contiguous Tracts Having One Owner. Whenever two or more contiguous Tracts shall be owned by the same Person, and such Owner shall desire to use two or more of said Tracts as a site for a single Dwelling Unit, he shall apply in writing to the Architectural Control Committee for permission to so use said Tracts. If permission for such a use shall be granted, the Tracts constituting the site for such single Dwelling Unit shall be treated as a single Tract for the purpose of applying these Restrictions to said Tracts, so long as, and only so long as, the Tracts remain improved with one single Dwelling Unit; **provided, however,** that any dues, fees, or other charges shall be assessed against each Tract individually.

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**ARTICLE XII
Assessments**

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnish the Owners with a financial statement of operations by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

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Section 2. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Association at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual or special meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual or special meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners attending such meeting; provided, however, that in no event shall such annual or

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1431 special meeting of the Owners be adjourned until an annual budget is approved and
 1432 adopted at such meeting, either the proposed annual budget or the proposed annual
 1433 budget as amended. The annual budget, the Regular Assessments and all sums
 1434 assessed by the Association shall be established by using generally accepted
 1435 accounting principles applied on a consistent basis. The annual budget and the
 1436 Regular Assessments shall, in addition, be established to include the establishment
 1437 and maintenance of a replacement reserve fund for capital expenditures and
 1438 replacement and repair of the Common Areas, which replacement reserve fund shall be
 1439 used for those purposes and not for usual and ordinary repair expenses of the
 1440 Common Areas. Such replacement reserve fund for capital expenditures and
 1441 replacement repair of the Common Areas shall be maintained by the Association in a
 1442 separate interest bearing account or accounts with one or more banks or savings and
 1443 loan associations authorized to conduct business in Morgan County, Johnson County,
 1444 or Marion County, Indiana selected from time to time by the Board. The failure or delay
 1445 of the Board of Directors to prepare a proposed annual budget and to furnish a copy
 1446 thereof to the Owners shall not constitute a waiver or release in any manner of the
 1447 obligations of the Owners to pay the Common Expenses as herein provided, whenever
 1448 determined. Whenever, whether before or after the annual or special meeting of the
 1449 Association at which the budget is to be acted upon, there is no annual budget
 1450 approved by the Owners as herein provided for the current fiscal year, the Owners shall
 1451 continue to pay Regular Assessments based upon the last approved budget or, at the
 1452 option of the Board, based upon one hundred and ten percent (110%) of such last
 1453 approved budget, as a temporary budget.
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Section 3. Regular Assessments. The annual budget as adopted by the

1455 Owners shall, based on the estimated cash requirements for the Common Expenses in
 1456 the fiscal year covered thereby as set forth in said budget, contain a proposed
 1457 assessment against each Tract, which shall be the same amount for each Tract,
 1458 provided, however, Tracts owned by Declarant shall not be subject to assessment.
 1459 Immediately following the adoption of the annual budget, each Owner shall be given
 1460 written notice of the assessment against his respective Tract (herein called the
 1461 "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year
 1462 is initially based upon a temporary budget, each Regular Assessment shall be revised,
 1463 within fifteen (15) days following adoption of the final annual budget by the Owners, to
 1464 reflect the assessment against each Tract based upon such annual budget as finally
 1465 adopted by the Owners. The aggregate amount of the Regular Assessments shall be
 1466 equal to the total amount of expenses provided and included in the final annual budget,
 1467 including reserve funds as hereinabove provided. The Regular Assessment against
 1468 each Tract shall be paid in full in advance by a date specified by the Board which date
 1469 shall not be earlier than fifteen (15) days after the written notice of such Regular
 1470 Assessment is given to the Owners. However, at the option of the Board, the Regular
 1471 Assessment against each Tract may be paid in advance in equal quarterly installments
 1472 commencing on the first day of the first month of each fiscal year and quarterly
 1473 thereafter through and including the first day of the last quarter of such fiscal year.
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1475 Payment of the Regular Assessment, whether in one payment or in quarterly
 1476 installments, shall be made to the Board of Directors or the Managing Agent, as
 1477 directed by the Board of Directors. In the event the Regular Assessment for a particular
 1478 fiscal year of the Association was initially based upon a temporary budget,
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(a) if the Regular Assessment based upon the final annual budget adopted
 1480 by the Owners exceeds the amount of the Regular Assessment based upon
 1481 the temporary budget, that portion of such excess applicable to the period
 1482 from the first day of the current fiscal year to the date of the next payment of
 1483 the Regular Assessment which is due shall be paid with such next payment
 1484 and such next payment, and all payments thereafter during such fiscal year,
 1485 whether annual or quarterly, shall be increased so that the Regular
 1486 Assessment as finally determined shall be paid in full by the remaining
 1487 payments due in such fiscal year, or
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(b) if the Regular Assessment based upon the temporary budget exceeds the
 1489 Regular Assessment based upon the final budget adopted by the Owners,
 1490 such excess shall be credited against the next payment or payments of the
 1491 Regular Assessment coming due, whether annual or quarterly, until the entire
 1492 amount of such excess has been so credited; provided, however, that if an
 1493 Owner had paid his Regular Assessment in full in advance, then to
 1494 adjustments set forth under (a) or (b) above shall be made by a cash
 1495 payment by, or refund to, the Owner or the first day of the second month
 1496 following the determination of the Regular Assessment based upon the
 1497 annual budget finally adopted by the Owners. The Regular Assessment for
 1498 each fiscal year of the Association shall become a lien on each separate
 1499 Tract as of the first day of each fiscal year of the Association, even though
 1500 the final determination of the amount of such Regular Assessment may not
 1501 have been made by that date. The fact that an Owner has paid his Regular
 1502 Assessment for the current fiscal year in whole or in part based upon a
 1503 temporary budget and thereafter, before the annual budget and Regular
 1504 Assessment are finally determined, approved and adjusted as herein
 1505 provided, sells, conveys or transfer his Tract or any interest therein, shall not
 1506 relieve or release such Owner or his successor as Owner of such Tract from
 1507 payment of the Regular Assessment for the Tract as finally determined, and
 1508 such Owner and his successor as Owner of such Tract shall be jointly and
 1509 severally liable for the Regular Assessment as finally determined. Any
 1510 statement of unpaid assessments furnished by the Association pursuant to
 1511 Section 2 of Article XII thereof prior to the final determination and adoption of
 1512 the annual budget and regular Assessment for the year with respect to which
 1513 such statement is made shall state that the matters set forth therein are
 1514 subject to adjustment upon determination and adoption of the final budget
 1515 and Regular Assessment for such year, and all parties to whom any such
 1516 statement may be delivered or who may rely thereon shall be bound by such
 1517 final determinations. Annual or quarterly (if so determined by the Board)
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installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the Bylaws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Tract nor owned by Declarant, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient thereof under the circumstances described in this Declaration.

Section 5. Failure of Owner to Pay Assessments.

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Common Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Tract belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Tract. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. Regular and special assessments should constitute a lien against the Tracts and Dwelling Units thereon. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments against his Tract when due, the lien for such Assessment on the Owner's Tract and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Association as a mortgage on real property or as otherwise provided or permitted by law. Upon the failure of an Owner to make timely payments of any such Regulation Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Tract and Dwelling Unit which are the subject of such action shall be jointly and severally liable for the payment to the Association of reasonable rental for such Tract and

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Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Tract and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby waiving) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or any other charges due the Association, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Tract and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly announced or published by NBD Bank, N.A. or its successors (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana selected by the Board) plus 4% but in no event more than the maximum rate allowable under applicable usury laws.

(b) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the Bylaws, any sale or transfer of a Tract and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Tract and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments or other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Tract and Dwelling Unit from which it arose).

Section 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the Bylaws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article XII hereof shall be deemed to

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cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owed or payable by Declarant with respect to any Tract or other portion of the Real Estate owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or charges become a lien on any such Tract or other portion of the Real Estate owned by Declarant, nor shall any such Assessments or charges become a lien on any such Tract or other portion of the Real Estate owned by Declarant. Assessments against a Tract shall commence to accrue from the date each Tract is conveyed by Declarant to another Person, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Association against each Tract so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

ARTICLE XIII
Real Estate Taxes and Utilities

Section 1. Real Estate Taxes. Real Estate taxes on each Tract, and on any Structure or other improvements on each Tract are to be separately assessed and taxed to each Tract and shall be paid by Owner of such Tract. Any real estate taxes or assessments against the Common Areas shall be paid by the Association and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Tract and Structure. Utilities which are not separately metered to an Owner's Tract or Structure shall be treated as and paid as part of the Common Expense.

ARTICLE XIV
Mortgages

Section 1. Notice to Association. Any Owner who places a first mortgage lien upon his Tract, or the Mortgagee, shall notify the Secretary of the Association thereof and provide the address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise

required by this Declaration, the Bylaws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

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The Association shall, upon request of a Mortgagee who has furnished the Association with its name and address as hereinabove provide, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

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Section 2. Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Tract, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Tract, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Tract shall not be liable for nor shall the Tract conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement except as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article XII hereof.

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ARTICLE XV
Insurance

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Association as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such

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1695 bonds do not exceed the funds which will come into its hands, and there is damage to a
1696 part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain
1697 and post a bond for the faithful performance of its duties in an amount to be determined
1698 by the Board, but not less than 150% of the loss, before the Board shall be entitled to
1699 receive the proceeds of the insurance payable as a result of such loss. The sole duty
1700 on the Board in connection with any such insurance proceeds shall be to receive such
1701 proceeds as are paid and to hold the same for the purposes elsewhere stated herein,
1702 and for the benefit of the Owners. The proceeds shall be used or distributed by the
1703 Association or the Board, as appropriate, only in accordance with the provisions of this
1704 Declaration.

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Such master casualty insurance policy, and "all risk" coverage if obtained, shall
1706 (to the extent the same are obtainable) contain provisions that the insurer (a) waives its
1707 right to subrogation as to any claim against the Association, the Board of Directors, its
1708 agents and employees. Owners, their respective agents and guests, and (b) waives
1709 any defense based on the invalidity arising from the acts of the insured, and providing
1710 further, if the Board of Directors is able to obtain such insurance upon reasonable
1711 terms (i) that the insurer shall not be entitled to contribution against casualty insurance
1712 which may be purchased by individual Owners, and (ii) that notwithstanding any
1713 provision thereof giving the insurer an election to restore damage in lieu of a cash
1714 settlement, such option shall not be exercisable in the event the Association does not
1715 elect to restore.

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Section 2. Public Liability Insurance. The Association shall also purchase a
1718 master comprehensive public liability insurance policy in such amount or amounts as
1719 the Board of Directors shall deem appropriate from time to time, but in any event with a
1720 minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public
1721 liability insurance policy shall cover all the Common Areas and shall insure the
1722 Association, the Board of Directors, any committee or organ of the Association or
1723 Board, any Managing Agent appointed or employed by the Association, the Declarant
1724 and all persons acting or who may come to act as agents or employees of any of the
1725 foregoing with respect to the Real Estate, all Owners of Tracts and all other persons
1726 entitled to occupy any Tract or Dwelling Unit. Such public liability insurance policy shall
1727 contain a "severability of interest" clause or endorsement which shall preclude the
1728 insurer from denying the claim of an Owner because of negligent acts of the
1729 Association or other Owners.

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Section 3. Other Insurance. The Association shall also obtain any other
1732 insurance required by law to be maintained, including but not limited to workmen's
1733 compensation and occupational disease insurance, and such other insurance as the
1734 Board of Directors may from time to time deem necessary, advisable or appropriate,
1735 including but not limited to, liability insurance on vehicles owned or leased by the
1736 Association and officers' and directors' liability policies. Such insurance coverage shall
1737 also provide for and cover cross liability claims of one insured party against another
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insured party. Such insurance shall inure to the benefit of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. Upon request of any Owner or Mortgagee whose interest may be affected thereby, the Association shall provide such Owner or mortgagee with a description of the insurance coverage maintained by the Association.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Tract, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

**Article XVI
Casualty and Restoration**

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Areas, or in the event there are no insurance

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1783 proceeds, the cost for restoring the damage and repairing and reconstructing the
1784 Common Areas so damaged or destroyed (or the costs thereof in excess of insurance
1785 proceeds received, if any) shall be assessed by the Association against all of the
1786 Owners in equal shares. Any such amounts assessed against the Owners shall be
1787 assessed as part of the Common Expenses and shall constitute a lien from the time of
1788 assessment as provided herein.
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1790 For purposes of this Article, repair, reconstruction and restoration shall mean
1791 construction or rebuilding the Common Areas to as near as possible the same condition
1792 as they existed immediately prior to the damage or destruction and with the same
1793 architecture and materials.
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1795 Immediately after a fire or other casualty or disaster causing damage to any
1796 property for which the Board of Directors or Association has the responsibility of
1797 maintenance and repair hereunder, the Board shall obtain reliable and detailed
1798 estimates of the cost to replace the damaged property in a condition as good as that
1799 before the casualty. Such costs may include professional fees and premiums for such
1800 bonds as the Board of Directors desires or deems necessary.
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1802 Encroachments upon any Tract which may be created as a result of such
1803 reconstruction or repair of any of the Common Areas shall not constitute a claim or
1804 basis of a proceeding or action by the Owner upon whose Tract such encroachment
1805 exists, provided that such reconstruction was either substantially in accordance with the
1806 plans and specifications or as the Common Areas were originally constructed.
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1808 **ARTICLE XVII^R**
1809 **Annexation**
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1812 Declarant hereby reserves the right, from time to time and at any time, to annex
1813 any portion of adjacent real estate into Auburn Ridge Subdivision. As of the date on
1814 which Declarant annexes any portion of adjacent real estate into the subdivision (the
1815 "Annexed Real Estate"), the Annexed Real Estate shall be deemed to be (for all
1816 purposes) included within Auburn Ridge Subdivision; all references in these covenants
1817 and restrictions or in the Declaration to the "subdivision" or the "Auburn Ridge
1818 Subdivision" shall be deemed to include the Annexed Real Estate; all references in
1819 these covenants and restrictions or in the Declaration to "Real Estate" shall be deemed
1820 to include all parcels of land within the Annexed Real Estate; all references in these
1821 covenants and restrictions or in the Declaration to "Tracts" shall be deemed to include
1822 all Tracts within the Annexed Real Estate; and all easements created by these
1823 covenants and restrictions or in the Declaration shall bind, benefit, burden and run with
1824 the Annexed Real Estate. As of the date on which Declarant annexes any portion of the
1825 adjacent real estate into the subdivision, the owners of the Annexed Real Estate shall
1826 be deemed to be (for all purposes) owners of Tracts within the Auburn Ridge

Subdivision; all references in these covenants and restrictions and the Declaration to "Owner(s)" shall be deemed to include all owners of Tracts within the annexed Real Estate; and all easements created herein shall bind, benefit and burden the owners of Tracts within the Annexed Real Estate and the mortgages, grantees, heirs, assigns and successors of such owners, as provided herein.

ARTICLE XVIII
Amendment of Declaration

Section 1. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner;

- (a) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (c) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.
- (d) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote not less than seventy-five percent (75% in the aggregate of the votes of all Owners). In the event any Tract or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(e) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Article XV of this Declaration with respect to casualty insurance to be maintained by the Association, or (3) the provisions of Article XVI of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each or any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made

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known to the Board of Directors in accordance with the provisions of the Declaration.

(f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Morgan County, Indiana, and such amendment shall not become effective until so recorded.

Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything else contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if Declarant records the modification in the Office of the Recorder of Morgan County, Indiana, and if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Tracts and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) function similar to those performed by such agencies or entities, (e) to subject additional property to these restrictions, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (g) to clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, or (h) to change the substance of one or more covenants, conditions, terms or provisions hereof provided that such change (A) does not materially increase the obligation(s) of any Owner under any covenant, condition, term or provision without such Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Declarant to vote in favor of, make or consent to any amendments described in this Section 2 or behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Tract or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate or adjacent Property.

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**ARTICLE XIX
Acceptance and Ratification**

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1918 All present and future Owners, Mortgagees, tenants and occupants of the Tracts
1919 and Dwelling Units, and other Persons claiming by, through or under them, shall be
1920 subject to and shall comply with the provisions of this Declaration, the Articles, the
1921 Bylaws and the rules, regulations and guidelines as adopted by the Board of Directors
1922 and (to the extent of its jurisdiction) the Committee, as each may be amended or
1923 supplemented from time to time. The acceptance of a deed of conveyance of the act of
1924 occupancy of any Tract or Dwelling Unit shall constitute an agreement that the
1925 provisions of this Declaration, the Articles, the Bylaws and rules, regulations and
1926 guidelines, as each may be amended or supplemented from time to time, are accepted
1927 and ratified by such Owner, tenant or occupant, and all such provisions shall be
1928 covenants running with the land and shall bind any Person having at any time any
1929 interest or estate in a Tract or Dwelling Unit or the Real Estate, all as though such
1930 provisions were recited and stipulated at length in each and every deed, conveyance,
1931 mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a
1932 Tract or Dwelling Unit or any part of the Real Estate in any manner shall be subject to
1933 this Declaration, the Articles, the Bylaws, and the rules, regulations and guidelines
1934 applicable thereto as each may be amended or supplemented from time to time.

**ARTICLE XX
Negligence**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

**ARTICLE XXI
Benefit and Enforcement**

Section 1. Covenants Appurtenant to Land. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless at any time after fifteen (15) years a majority of the then owners of the Tracts in this subdivision agree to change (or terminate) said covenants in whole or in part and on the condition that an instrument to that effect signed by the Tract owners

1959 voting in favor of such change has been recorded; provided, however, that no change
1960 or termination of said covenants shall affect any easement hereby created or granted
1961 unless all persons entitled to the beneficial use of such easement shall consent thereto.
1962

1963 **Section 2. Prosecution of Violations.** It shall be lawful for the Association, the
1964 Committee (as to matters for which it has responsibility) or any other person owning
1965 any real property situated in this subdivision to prosecute any proceedings at law or in
1966 equity against the person or persons violating or attempting to violate any covenant,
1967 conditions, provisions or restrictions contained herein either to prevent such person or
1968 persons from doing so, or to recover damages or other dues for such violation, or to
1969 require the removal of structures erected in violation hereof. **All costs of litigation and**
1970 **attorneys' fees resulting from violation of these covenants and restrictions shall**
1971 **be the financial responsibility of the Tract Owner or Owners found to be in**
1972 **violation.** Invalidation of any one of these covenants by judgment or court order shall
1973 in no way affect any of the other provisions which shall remain in full force and effect.
1974 Failure to enforce any specific requirement of the covenant shall not be considered as
1975 a waiver of the right to enforce any covenant herein, thereafter. Notwithstanding the
1976 foregoing, any violation of these covenants or the Declaration may be waived by a
1977 majority of the then owners of the Tracts in this subdivision.
1978

ARTICLE XXII
Miscellaneous

1983 **Section 1. Costs and Attorneys' Fees.** In any proceeding arising because of
1984 failure of an Owner to make any payments required by this Declaration, the Articles or
1985 the Bylaws, or to comply with any provision of this Declaration, the Articles, the Bylaws,
1986 or the rules, regulations and guidelines adopted pursuant thereto, as each may be
1987 amended from time to time, the Association shall be entitled to recover its costs and
1988 reasonable attorneys' fees incurred in connection with such default or failure.
1989

1990 **Section 2. Waiver.** No Owner may exempt himself from liability for his
1991 contributions toward the Common Expenses by waiver of the use of enjoyment of any of
1992 the Common Areas or by abandonment of his Tract or Dwelling Unit.
1993

1994 **Section 3. Severability Clause.** The invalidity of any covenant, restriction,
1995 condition, limitation or other provision of this Declaration, the Articles or the Bylaws
1996 shall not impair or affect in any manner the validity, enforceability or effect of the rest of
1997 this Declaration, the Articles or the Bylaws and each shall be enforceable to the
1998 greatest extent permitted by law.
1999

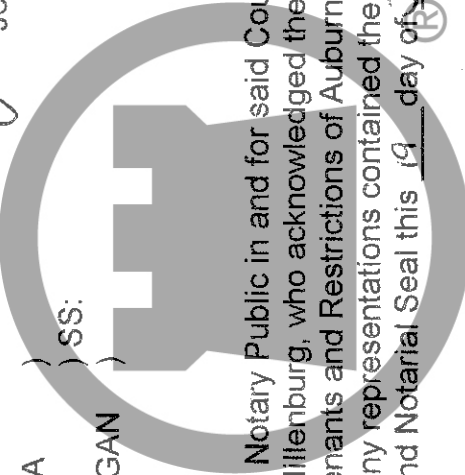
2000 **Section 4. Pronouns.** Any reference to the masculine, feminine or neuter
2001 gender herein shall, unless the context clearly requires the contrary, be deemed to

refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 5. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

IN WITNESS WHEREOF, Jerry L. Hillenburg, Declarant herein, has executed this Declaration on the day and year first hereinabove set forth.

By: Jerry Hillenburg
Jerry L. Hillenburg



STATE OF INDIANA)
) SS:
COUNTY OF MORGAN)

Before me, a Notary Public in and for said County and State, personally appeared Jerry L. Hillenburg, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of Auburn Ridge, and who, have been duly sworn, stated that any representations contained therein are true.
Witness my hand and Notarial Seal this 19 day of Jan, 1999.

CHICAGO TITLES
Notary Public Janeta A. Howard
Printed: Janeta A. Barnard
Resident of Morgan County

My Commission expires:
5/29/01

This Document Prepared by:
Daniel Gettlefinger
Smith and Gettlefinger
359 East Morgan
Martinsville Indiana, 46151
765-342-7148

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Exhibit "A"

Description of Auburn Ridge Section 1

Part of the West Half of the Northwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County., Indiana, described as follows:

BEGINNING at a 1-1/2 inch iron pipe in the county road which marks the southwest corner of the West Half of the Northwest Quarter; thence North no degrees 28 minutes 03 seconds East (assumed bearing), with the west line of the West Half and in the county road, 288.40 feet to an iron survey nail; thence North 77 degrees 47 minutes 21 seconds East, 1136.46 feet to an iron pin; thence South 89 degrees 23 minutes 20 seconds East, 223.95 feet to an iron pin on the east line of the West Half; thence South no degrees 39 minutes 32 seconds West, with the east line of the West half, 520.31 Feet to an iron pin which marks the southeast corner of said West Half; thence South 89 degrees 43 minutes 35 seconds West, with the south line of the West Half, 1331.08 feet to the Point of Beginning.

Containing 13.005 acres more or less, including that portion of the lands hereby dedicated to the public for roadway purposes and subject and to any other rights-of-way, easements or restrictions of record or observable.

Unless stated otherwise, the references to "iron pin" and "iron survey nail" in this description refer to monuments set by Ross O. Holloway, Indiana Registered Land Surveyor, during the original survey of this tract in December of 1998. Each iron pin is 5/8" diameter with a plastic cap marked "Holloway-S0530". Each iron survey nail is a 2" P.K. nail with washer stamped "Holloway-S0530".

Exhibit "B"

Part of the North Half of the Southwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County, Indiana, described as follows:

BEGINNING at a stone which marks the northeast corner of the North half of the Southwest Quarter; thence South no degrees 25 minutes 38 seconds West (assumed bearing), with the east line of said North Half, 1330.71 feet to an iron pin which marks the southeast corner of said North Half; thence South 89 degrees 35 minutes 33 seconds West, with the south line of the North Half, 1675.11 feet to an iron pin; thence North no degrees 33 minutes 08 seconds East, parallel with the west line of said North Half, 1334.67 feet to an iron pin on the north line of the North Half of the Southwest Quarter; thence North 89 degrees 43 minutes 35 seconds East, with said north line, 1672.15 to the point of Beginning.

Containing 51.198 acres, more or less, and subject to any easements, rights-of-way or restrictions of record or observable.

CHICAGO TITLE

RECEIVED FOR RECORD

Jan. 19 1999
at 8:40 A.M.

Karen Brunnett
MORGAN COUNTY RECORDER

1/10/15
P.S.

FIRST AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS

OF

Auburn Ridge

Subdivision

The undersigned Declarant, pursuant to Article XVIII Section 2 of the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision, recorded in the office of the Recorder of Morgan County, Indiana as Miscellaneous Record 156, Page 347 ("Declaration") hereby amends the Declaration to subject additional property to be known as Auburn Ridge Section II to the covenants and restrictions set forth therein by substituting Exhibit "A" attached hereto and incorporated by reference as the legal description of the Real Estate, as defined in the Declaration.

The undersigned Declarant further amends the Declaration by adding the following provision to **Article I (Definitions) Section 1** thereof:

(u) "Access Tract" shall mean and refer to Tract 15 of Section II of Auburn Ridge. Said Tract shall be an access way for Tracts located east of the creek (Crooked Creek). A bridge and elevated roadway with flood culverts and other related items that meet the specifications set forth by Indiana Department of Natural Resources and engineering specifications supplied by the Declarant may be placed on said Tract. Certain portions of the Access Tract is a periodic floodway for Crooked Creek and, except for the roadway's grade, the periodic floodway's ground grade shall not be elevated. Said Tract shall not be used as a Dwelling or Accessory Building site and is not subject to assessments by the Association. Each Tract that uses or has access to Access Tract for ingress and egress shall be subject to this Declaration as though they are a separate and individual Tract.

The undersigned Declarant further amends the Declaration by adding the following provisions to **Article II Section 3 (Private Roadways)** thereof:

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- (a) When Auburn Ridge Homeowners Association causes snow removal on the roadways of Auburn Ridge, removal of snow from the steep roadway incline in Section II will occur. Beyond that, if conditions require additional snow and ice removal of the steep incline, the owners of Tract Thirteen (13) and Tracts that use or has access to Access Tract for ingress and egress shall cause removal.
- (b) Except as required by law, or with permission from the Auburn Ridge Homeowners Association, nothing herein shall be construed to permit owners and agents of utility easements dedicated to cross country transmission and pipe lines use of the roadways of Auburn Ridge for ingress and egress.

The undersigned Declarant further amends the Declaration and further defines Article VII Section 39 (Future Section Use) by adding the following provisions to certain sections of **Article VII (Use Standards)** thereof:

Section 1. Animals and Pets. Farm Animals are permitted on tracts of five (5) acres or more.

Section 8. Drainage Easements. Periodic flooding of the water retention lake on Tract 14, the creek, and other areas should be expected and no owner shall have any recourse whatsoever against the Declarant or the Association on account of the condition, erosion, creek location change, or any other modification of drainage areas due to the movement of water or otherwise. The creek floodway's ground grade shall not be elevated except as permitted for Access Tract roadway.

Section 11. Fences. Farm type fencing is permitted to contain farm animals on tracts of five (5) acres or more. No farm fencing may be placed within fifty (50) foot of roadway-center without approval from Architectural Control Committee.

Section 12. Firearms. This Section shall apply unmodified to Section II.

Section 17. Maintenance of Improved Tracts. Steep incline and wetland areas on Tracts 10, 11, and 12 shall not require mowing, but noxious weeds shall be eradicated by spraying. Tree and wildflower growth shall be encouraged in these areas to create wooded and prairie grass areas. If owners of these Tracts desire, lakes may be created in wetland areas, but Declarant does not guarantee these areas to be suitable lakesite locations. Steep incline areas on Tract 14 shall not require mowing but noxious weeds shall be eradicated by spraying. Wildflower growth shall be encouraged in these areas to create prairie grass areas.

Section 18. Maintenance of Vacant Tracts. Same as Section 17 above.

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Section 24. Outside Storage. This Section Shall apply unmodified to Section II.

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Section 26. Prohibited Vehicles. When screened from the view of other Tracts

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with landscaping, outside storage of two (2) vehicles, (including but not limited

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to trailers, boats, RVs etc.), other than commercial vehicles in excess of ¼

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ton, is permitted on tracts of five (5) acres or more.

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Section 29 b. Refuse Disposal. Outside burning of tree limbs and brush is

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permitted when done in accordance with rules and regulations of the

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appropriate government agency on tracts of five (5) acres or more.

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Section 38. Utility Lines and Utility Easements. On Tract 14 of Section II a

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fifteen (15) foot wide utility easement shall extend from the Access and Utility

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Easement into the Tract. Said easement to extend five (5) foot past the

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electrical transformer as it was first installed, and the centerline shall be the

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electrical line location as it was first installed.

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Except as amended herein, the Declaration shall remain unmodified and in

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full force and effect.

98

IN WITNESS WHEREOF, this First Amendment to Declaration of Covenants

99

and Restrictions of Auburn Ridge Subdivision has been executed this 1st day of

100

OCTOBER 1999.

101

By: Jerry L. Hillenburg

102

Jerry L. Hillenburg

103

STATE OF INDIANA)

104

SS:)

105

COUNTY OF MORGAN)

106

Before me a Notary Public in and for said County and State, personally

107

appeared Jerry L. Hillenburg, who acknowledged the execution of the foregoing

108

instrument as his voluntary act and deed for the purpose and uses therein set forth.

109

Witness my hand and Notarial Seal this 1 day of OCT, 1999.

110

My Commission Expires: Notary Public Patricia A. Tullyman

111

06-25-2007 Printed: PATRICIA A. TULLYMAN

112

Resident of JOHNSON County

113

This Instrument Prepared by:

114

Jerry Hillenburg

115

8365 Woodlawn Drive

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Martinsville IN 46151

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Exhibit "A"

continued

Commencing at a 1-1/2 inch iron pipe which marks the northwest corner of the above captioned North Half; thence North 89 degrees 43 minutes 35 seconds East (assumed bearing) with the north line of the North Half, 730.00 feet to a found iron pin with cap engraved "Holloway-S0530" and the POINT OF BEGINNING of the parcel herein described; thence South no degrees 33 minutes 08 seconds West, 616.44 feet to a found iron pin with cap engraved "Holloway-S0530"; thence North 89 degrees 43 minutes 35 seconds East, 260.00 feet to a found iron pin with cap engraved "Holloway-S0530"; thence South no degrees 33 minutes 08 seconds West, 718.23 feet to a found iron pin with cap engraved "Holloway-S0530" on the south line of the North Half; thence North 46 degrees 50 minutes 52 seconds East, 411.15 feet to a point in a creek; thence in a creek for the following eight (8) courses; 1) North 37 degrees 36 minutes 02 seconds East, 82.34 feet; 2) North 79 degrees 23 minutes 33 seconds East, 46.38 feet; 3) North 16 degrees 58 minutes 25 seconds East 109.78 feet; 4) North 67 degrees 28 minutes 04 seconds East, 134.87 feet; 5) North 45 degrees 08 minutes 01 seconds East, 136.53 feet; 6) North 17 degrees 59 minutes 58 seconds East, 312.79 feet; 7) North 05 degrees 34 minutes 35 seconds West, 94.30 feet; 8) North 17 degrees 14 minutes 46 seconds East, 97.41 feet; thence North 09 degrees 28 minutes 29 seconds West, 249.07 feet to a point on the north line of the North Half of the Southwest Quarter; thence South 89 degrees 43 minutes 35 seconds West, 971.68 feet to the Point of the Beginning.

Containing 20.050 acres, more or less, and subject to any easements, rights-of-way or restrictions of record or observable.

RECEIVED
FOR RECORD

99 OCT -4 AM 11:19

William J. Bennett
HOREN'S RECORDER

Exhibit "A"

**Legal Description for
Auburn Ridge Subdivision**

Auburn Ridge Section I

Part of the West Half of the Northwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County., Indiana, described as follows:

BEGINNING at a 1-1/2 inch iron pipe in the county road which marks the southwest corner of the West Half of the Northwest Quarter; thence North no degrees 28 minutes 03 seconds East (assumed bearing), with the west line of the West Half and in the county road, 288.40 feet to an iron survey nail; thence North 77 degrees 47 minutes 21 seconds East, 1136.46 feet to an iron pin; thence South 89 degrees 23 minutes 20 seconds East, 223.95 feet to an iron pin on the east line of the West Half; thence South no degrees 39 minutes 32 seconds West, with the east line of the West half, 520.31 Feet to an iron pin which marks the southeast corner of said West Half; thence South 89 degrees 43 minutes 35 seconds West, with the south line of the West Half, 1331.08 feet to the Point of Beginning.

CHICAGO TITLE
Containing 13.005 acres more or less, including that portion of the lands hereby dedicated to the public for roadway purposes and subject and to any other rights-of-way, easements or restrictions of record or observable.

Also:

Auburn Ridge Section II

Part of the North Half of the Southwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County, Indiana, described as follows:

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS**

OF

Auburn Ridge

Subdivision

The undersigned Declarant, pursuant to Article XVIII Section 2 of the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision, recorded in the Office of the Recorder of Morgan County, Indiana as Miscellaneous Record 156, Page 347 as amended by a First Amendment to Declaration of Covenants and Restrictions of Auburn Ridge Subdivision, recorded on October 4, 1999, in the Office of the Recorder of Morgan County, Indiana as Miscellaneous Record 159, Page 699 ("Declaration") hereby amends the Declaration by adding the following provision to Article VII thereof:

Section 38. Utility Lines and Utility Easements. Along the common tract line of Tract Ten (10) and Eleven (11), of Section II, and along the common tract line of Tract Twelve (12) and Thirteen (13) of Section II, a fifteen (15) foot wide utility easement shall extend from the Access and Utility Easement into the Tracts. Said easement to extend five (5) foot past the electrical transformer as it was first installed, and the centerline shall be the common tract lines.

Except as amended herein, the Declaration shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, this Second Amendment to Declaration of Covenants and Restrictions of Auburn Ridge Subdivision has been executed this 19 day of OCTOBER 1999.

By: Jerry L. Hillenburg
Jerry L. Hillenburg

36 STATE OF INDIANA)
37) SS:
38 COUNTY OF MORGAN)
39)
40)

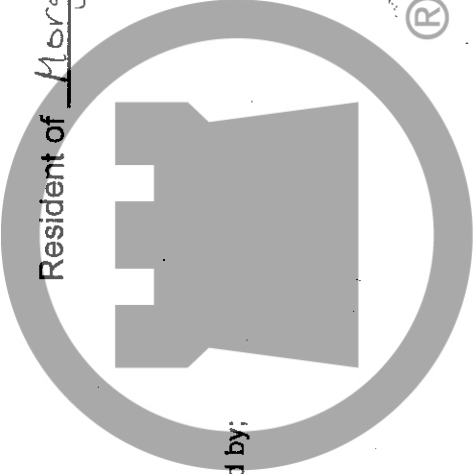
41 Before me a Notary Public in and for said County and State, personally
42 appeared Jerry L. Hillenburg, who acknowledged the execution of the foregoing
43 instrument as his voluntary act and deed for the purpose and uses therein set forth.
44

45 Witness my hand and Notarial Seal this 19th day of October, 1999.
46

47
48 My Commission Expires: Notary Public Elizabeth A. Ferguson

49
50 Oct. 3, 2007 Printed: Elizabeth A. Ferguson

51
52 Resident of Morgan County



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54
55
56 This Instrument Prepared by:
57 Jerry L. Hillenburg
58 8365 Woodlawn Drive
59 Martinsville IN 46151
60

RECEIVED
FOR RECORD
CHICAGO TITLE
99 OCT 19 AM 9: 21

Karen Krumholz
MORGAN CO RECORDER

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THIRD AMENDMENT TO Book 62 Page 300
DECLARATION OF COVENANTS AND RESTRICTIONS

OF

Auburn Ridge

Subdivision

The undersigned Declarant, pursuant to Article XVIII Section 2, "Amendments By Declarant Only," of the Covenants and Restrictions of Auburn Ridge Subdivision, as recorded in Miscellaneous Record 156, Page 347, et seq. of the Recorder's Office of Morgan County, Indiana, hereby amends said Declaration of Covenants and Restrictions in the following particulars only

The Declaration and the plat recorded in Deed Record 419, Page 166, et seq. of the Recorder's Office of Morgan County, Indiana, are hereby amended by deleting the designation of "Future Roadway Tract" from the following described real estate:

Part of the West Half of the Northwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County, Indiana, described as follows: Commencing at a 1 ½ inch iron pipe in the county road which marks the southwest corner of the above captioned West Half of the Northwest Quarter; thence North no degrees 28 minutes 08 seconds East (assumed bearing) with the west line of the West Half and in the county road 288.40 feet to an iron survey nail which marks the northwest corner of Auburn Ridge - Section 1, as per plat recorded in Deed Record 419, page 166; thence with the north line of said subdivision, North 77 degrees 47 minutes 21 seconds East 709.96 feet to an iron pin which marks the northeast corner of Tract Number Four (4) in said subdivision and the POINT OF BEGINNING of the parcel herein described; thence South no degrees 28 minutes 03 seconds West with the east line of Tract Number Four (4), a distance of 247.22 feet to an iron survey nail which marks the southeast corner of Tract Number Four (4), said point also being on the centerline of a fifty (50) foot wide access and utility easement (Easement Number One (1); thence with said centerline for the following two (2)

courses; 1) North 79 degrees 15 minutes 50 seconds East 45.15 feet; 2) along a curve, concave southerly having a radius of 100.00 feet, a central angle of 02 degrees 37 minutes 11 seconds, a chord bearing North 80 degrees 34 minutes 26 seconds East 4.57 feet, an arc distance of 4.57 feet to an iron survey nail which marks the southwest corner of Tract Number Five (5) in Auburn Ridge Subdivision, Section 1; thence North no degrees 28 minutes 03 seconds East with the west line of said Tract Number Five (5), a distance of 248.73 feet to an iron pin which marks the northwest corner of said tract; thence South 77 degrees 47 minutes 21 seconds West with the north line of Auburn Ridge Subdivision, Section 1, a distance of 50.00 feet to the Point of Beginning. Containing 0.278 acres, more or less, and subject to a utility easement, twenty (20) feet in width off of the entire west side of the parcel and to all other easements, rights-of-way and restrictions of record or observable.

now known as Tract 5-A.

SUBJECT TO the following restrictions to run as covenants with said Tract

5-A.

1. Tract 5-A may not be a separate tract for a building site of a dwelling unit, even in combination with a part of another tract.
2. Tract 5-A may only be conveyed or transferred as a part of Tract 5 and, therefore, any accessory building or use that may be permitted upon Tract 5 may be permitted upon Tract 5-A as if it were a part of Tract 5.
3. Tract 5-A shall otherwise be subject to the same covenants and restrictions as any other tract or part of a tract and shall not be entitled to any further voting rights or assessments except as a part of Tract 5.

Except as amended herein, the Declaration and Plat shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, this Third Amendment to the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision and the Plat of the Subdivision has been executed this 14 day of MAY, 2000.

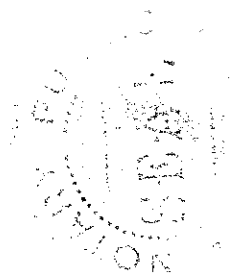

 JERRY L. HILLENBURG

STATE OF INDIANA)
)SS:
COUNTY OF MORGAN)

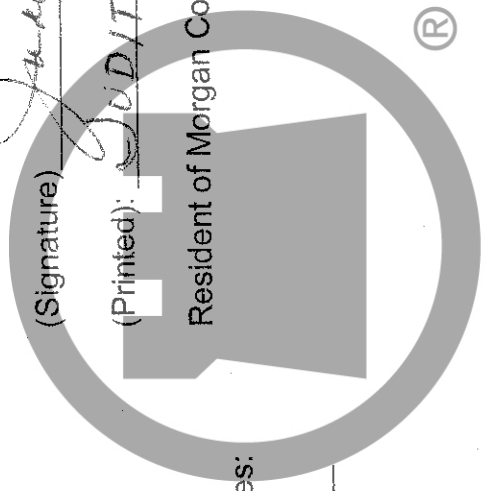
Before me, a Notary Public in and for said County and State, personally appeared Jerry L. Hillenburg, who acknowledged the execution of the foregoing instrument as his voluntary act and deed for the purpose and uses therein set forth.

WITNESS my hand and Notarial Seal this 4 day of May, 2000.

(Signature) Jessie L. Se John
(Printed): JUDITH L. SE JOHN
Resident of Morgan County, Indiana



My Commission Expires:
June 11, 2007



DULY ENTERED FOR TAXATION
Subject to final acceptance for transfer
MAY 4 2000

RECEIVED FOR RECORD
00 MAY -4 PM 12:00
Karen Drummet
MORGAN CO RECORDER

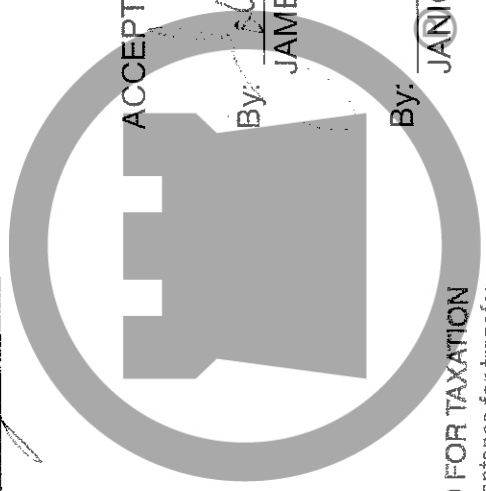
Burdel Adams
Auditor Morgan County

This Instrument Prepared By: Ralph M. Foley, FOLEY, FOLEY & PEDEN, 60 East Morgan Street, P.O. Box 1435, Martinsville, IN 46151. Ph: (765) 342-8474.

APPROVED AS A PLAT REVISION OF THE PLAT OF AUBURN RIDGE,
SECTION 1 AS RECORDED IN DEED RECORD 419, PAGE 166 BY THE
MORGAN COUNTY BOARD OF COMMISSIONERS

This Plat Revision being outside the boundaries of any municipality or
municipal Planning Commission is accepted and approved by the Morgan
County Board of Commissioners as by Code provided at a public meeting held

this 3rd day of July, 2000.



ACCEPTED AND APPROVED

By: James B. Bowyer
JAMES BOWYER

By: JANICE BACON

DULY ENTERED FOR TAXATION
Subject to final acceptance for transfer

By: Marvin Mason
MARVIN MASON

JUL 3 2000
Bonnie Adams
Auditor Morgan County

This Instrument Prepared By Ralph M. Foley, FOLEY FOLEY & PEDEN, 60 East
Morgan Street, P.O. Box 1435, Martinsville, Indiana 46151. Ph: (765) 342-8474.

RECORDED
INDEXED
JUL 10 2000

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**FOURTH AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS**

OF

7

Auburn Ridge

8

Subdivision

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The undersigned Declarant, pursuant to Article XVIII Section 2 of the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision, recorded in the office of the Recorder of Morgan County, Indiana as **Miscellaneous Record 156, Page 347** as amended by a First Amendment to the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision recorded on October 4, 1999, in the Office of the Recorder of Morgan County, Indiana as **Miscellaneous Record 159, Page 699**, as amended by a Second Amendment to the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision recorded on October 19, 1999 in the Office of the Recorder of Morgan County, Indiana as **Miscellaneous Record 159, Page 801** as amended by a Third Amendment to the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision recorded on July 3, 2000 in the Office of the Recorder of Morgan County, Indiana as **Miscellaneous Record 162, Page 360** (Declaration), hereby amends the Declaration to subject additional property to be known as Auburn Ridge Section III to the covenants and restrictions set forth therein by substituting Exhibit "A" attached hereto and incorporated by reference as the legal description of the Real Estate, as defined in the Declaration.

28
29
30

The undersigned Declarant further amends the Declaration by adding the following provision to **Article VII (Use Standards) Section 5** thereof:

31
32
33
34

Owners taking title from Declarant to Properties after December 1, 2000, shall not object or remonstrate against business or commercial uses of all nearby land owned by Declarant.

35 Except as amended herein, the Declaration shall remain unmodified and in
36 full force and effect.

37
38 IN WITNESS WHEREOF, this First Amendment to Declaration of Covenants
39 and Restrictions of Auburn Ridge Subdivision has been executed this ____ day of
40 _____, 2000.

41
42
43 By: _____
44 Jerry L. Hillenburg
45

46
47
48
49 STATE OF INDIANA)
50) SS:
51 COUNTY OF MORGAN)

52
53 Before me a Notary Public in and for said County and State, personally
54 appeared Jerry L. Hillenburg, who acknowledged the execution of the foregoing
55 instrument as his voluntary act and deed for the purpose and uses therein set forth.

56
57 Witness my hand and Notarial Seal this ____ day of _____, 2000.

58
59 My Commission Expires: _____
60 Notary Public (R)
61 Printed: _____

62
63 Resident of _____ County

64
65
66
67
68
69
70
71
CHICAGO TITLE

This Instrument Prepared by:
Jerry Hillenburg
8365 Woodlawn Drive
Martinsville IN 46151

Handwritten initials and date: 2/1/15

20113915

(11)

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**FIFTH AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS**

**OF
Auburn Ridge
Subdivision**

10

11

12

13

The undersigned Declarant, pursuant to Article XVIII Section 2 of the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision, recorded in the office of the Recorder of Morgan County, Indiana as **Miscellaneous Record 156, Page 347**, as amended by a First Amendment to the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision recorded on October 4, 1999, in the Office of the Recorder of Morgan County, Indiana as **Miscellaneous Record 159, Page 699**, as amended by a Second Amendment to the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision recorded on October 19, 1999 in the Office of the Recorder of Morgan County, Indiana as **Miscellaneous Record 159, Page 801**, as amended by a Third Amendment to the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision recorded on July 3, 2000 in the Office of the Recorder of Morgan County, Indiana as **Miscellaneous Record 162, Page 360**, as amended by a Fourth Amendment to the Declaration of Covenants and Restrictions of Auburn Ridge Subdivision recorded on December 4, 2000 in the Office of the Recorder of Morgan County, Indiana as **Miscellaneous Record 163, Page 985** (Declaration), hereby amends the Declaration to subject additional property to be known as Auburn Ridge unplatted Section IV to the covenants and restrictions set forth therein by substituting Exhibit "A" attached hereto and incorporated by reference as the legal description of the Real Estate, as defined in the Declaration.

33

34 The undersigned Declarant further amends the Declaration by adding the
35 following provision to **Article I (Definitions) Section 1** thereof:
36

37 v. "Parcel" shall mean and refer to one of two portions of Section IV of the Real
38 Estate shown on any recorded unplatted subdivision plat of Section IV of the
39 Real Estate. Declarant shall divide unplatted Section IV into two Parcels known
40 as "Parcel 1" and "Parcel 2". Both Parcels shall be conveyed to James and
41 Amber Rather, their successors and assigns (Purchasers) by separate
42 documents. After execution of this document and before receiving title by
43 Warranty Deed of Parcel 2, Purchasers may construct one (1) Dwelling Unit
44 (which shall be deemed to include any other buildings or improvements
45 appurtenant to such Dwelling Unit) upon Parcel 2. After receiving title by
46 Warranty Deed of Parcel 2 and before receiving title by Warranty Deed of Parcel
47 1, Purchasers may subdivide Parcel 2 into Tracts as desired so long as said
48 Parcel shall be a location for no more than four (4) Tracts for the use of no more
49 than four (4) Dwelling Units (which shall be deemed to include any other
50 buildings or improvements appurtenant to such Dwelling Unit). After receiving
51 title by Warranty Deed of Parcel 1, Purchasers may subdivide **Parcel 1 and/or**
52 **Parcel 2** as desired so long as both Parcels shall be a location for no more than
53 Five (5) Tracts for the use of no more than Five (5) Dwelling Units (which shall
54 be deemed to include any other buildings or improvements appurtenant to such
55 Dwelling Units). After initial conveyance of Parcel 1 and Parcel 2 by Declarant to
56 Purchasers, Purchasers may enlarge, reduce, combine, modify or otherwise
57 change boundaries of Tracts located within Parcel 1 and/or Parcel 2 of Section
58 IV. The determination of what portion of the Parcels in Section IV constitutes a
59 "Tract" for the purposes of Section IV shall be made reference to, and shall
60 mean, any and each portion of a Parcel or Parcels Purchaser developed and
61 improved for use as a Dwelling Unit, or any and each portion of a Parcel or
62 Parcels conveyed by Purchaser to another person for the use as a building site.
63 After Purchaser conveys a portion of a Parcel or Parcels to another person, that
64 portion becomes a Tract. The Tract's boundaries may be changed but the Tract
65 shall remain a single Dwelling site. Parcels are not subject to assessment by the
66 Association, and owners of Parcels have no Association voting rights. When a
67 portion of a Parcel or Parcels becomes a "Tract", as defined above, it is subject
68 to assessment by the Association and the Owners enjoy privileges afforded
69 Tract Owners. Each Dwelling Unit in Section IV must be on a tract of ground
70 defined as a "Tract" in Article I (Definitions) Section 1 item (l) (with the
71 exceptions defined above), and is subject to all the provisions of the Declaration
72 of Covenants and Restrictions. There shall be a maximum of five (5) Tracts for
73 no more than five (5) Dwelling Units in Section IV and the Tract size is to be no
74 smaller than one (1) acre.
75

76 The undersigned Declarant further amends the Declaration by adding the
77 following provision to **Article II (Declaration; Common Areas and Rights Therein)**
78 thereof;

79
80 **Section 4. Private Driveway.** The Private Driveway (designated as "access and
81 utility easement" on any recorded unplatted subdivision plat of Section IV of Real
82 Estate, and is partially within the boundaries of Tracts 14 and 15 of Section II of the
83 Real Estate) is a Common Area made of a mutual non-exclusive easement as
84 described in Article II Section 2. The easement is fifty (50) feet in width for ingress and
85 egress for the benefit of the several Owners and their guests of Tracts in Section IV of
86 Auburn Ridge. The access and utility easement shall extend into Parcel 2, and the
87 centerline of the easement within Parcel 2 shall be the centerline of the Private
88 Driveway as it was first installed. Said easement within Parcel 2 to extend twenty-five
89 (25) foot past the point (in a south direction) where the centerlines of the "Y" of the
90 Private Driveway intersect each other as it was first installed. Because of difficult
91 terrain, the Private Driveway access and utility easement shall extend to forty (40) feet
92 from any outermost edge of the steel or metal portion of the bridge crossing Crooked
93 Creek, as it was first installed. The Private Driveway easement is to be an access and
94 utility easement for no more than five (5) Dwellings east of Crooked Creek. The Private
95 Driveway easement is more particularly described in Section IV's Plat of Auburn Ridge.
96 **The cost of maintaining and repairing the Private Driveway in good, serviceable**
97 **condition shall be borne equally (by assessment as provided in Article XII) by the**
98 **several Owners of Parcels or Tracts of Section IV of Auburn Ridge.** There is
99 hereby created a non-exclusive easement upon, across, over, and under the Driveway
100 for ingress, egress for road maintenance, installation, repairing, all utilities, including
101 but not limited to water, sewers, gas, telephone, electricity, and master antenna or
102 cable system for Section IV of Auburn Ridge. By virtue of this easement, it shall be
103 expressly permissible for the company providing utility service to erect and maintain
104 necessary poles, equipment, and lines upon such easement to affix and maintain wires,
105 circuits, conduits, on, above, and under the roadway easement. A non-exclusive
106 easement is further granted for commercial farm operations traffic to use the roadway
107 for ingress and egress to and from the cul-de-sac (a road named Auburn Ridge) to and
108 from a Parcel or Tract. An easement is further granted to all police, fire protection,
109 ambulance, delivery and service personnel and vehicles and entities similar, to enter
110 upon the Driveway in performance of their duties. During slick weather conditions or
111 when a running start is needed to traverse the incline west of the cul-de-sac (a portion
112 of a road named Auburn Ridge in Section II of Auburn Ridge), the Private Roadway
113 easement as defined in Article II Section 3 is to extend one hundred forty (140) feet into
114 the Private Driveway easement from the center point of the cul-de-sac, and ten (10)
115 feet on either side of the centerline of the Private Driveway and is for the benefit of the
116 several Owners and guests of all Tracts of Auburn Ridge. This portion of the Private
117 Driveway easement is to be and remain unobstructed by fencing, gates, or any other
118 device. Except as required by law, or with permission from the majority of the Section IV
119 Tract Owners, nothing herein shall be construed to permit owners and agents of utility

120 easements dedicated to cross country transmission and pipe lines use of the Driveway
121 for ingress and egress.
122

123 The undersigned Declarant further amends the Declaration and further defines
124 **Article I (Definitions) Section 1 item (u) (Access Tract)** (located in the First
125 Amendment To Declaration Of Covenants and Restrictions) by adding the following
126 provision thereof;

127 “Access Tract” which means and refers to Tract 15 of Section II of Auburn Ridge,
128 shall become a Common Area made of a mutual non-exclusive easement as
129 described in Article II Section 2 and is **only** for the use and enjoyment (except as
130 noted in Section 4 of this document) of Owners and guests of Parcels and Tracts
131 of Section IV of Auburn Ridge. **The cost of taxes, insurance, maintaining and**
132 **repairing the Access Tract in good, serviceable condition shall be borne**
133 **equally (by assessment as provided in Article XII) by the several Owners of**
134 **Parcels or Tracts of Section IV of Auburn Ridge.**
135

136 The undersigned Declarant further amends the Declaration and further defines
137 **Article VII Section 39 (Future Section Use)** by adding the following provisions to
138 certain sections of **Article VII (Use Standards)** thereof:
139

140 **Section 12. Firearms.** This section shall apply unmodified to Sections III and IV
141 of Auburn Ridge.
142

143 **Section 24. Outside Storage.** This Section shall apply unmodified to Section III
144 and IV of Auburn Ridge. ^(R)
145

146 **Section 38. Utility Lines and Utility Easements.** Because of difficult terrain,
147 the Private Driveway access and utility easement shall extend to forty (40) feet from
148 any outermost edge of the steel or metal portion of the bridge crossing Crooked Creek,
149 as it was first installed. If needed, and with approval from Parcel or Tract Owner, a
150 twenty (20) foot wide utility easement shall extend from the Private Driveway access
151 and utility easement into Parcel 2. Said easement to extend five (5) foot past the end of
152 the utility line or lines and the centerline shall be the lines as they were first installed.
153 Nothing herein shall be construed to permit owners or agents of utility companies
154 extensions of this easement to service others outside of Parcel 2.
155

156 The undersigned Declarant further amends the Declaration by adding the
157 following provision to **Article IV Section 14 (Roof Pitch and Roof Materials)** thereof;
158

159 Tracts sold after the execution date of this document shall have Dwellings with
160 roof pitch of at least 8/12. A variance may be granted on a secondary pitch if the
161 predominate pitch is 8/12
162

163

164 Except as amended herein, the Declaration shall remain unmodified and in
165 full force and effect.
166

167
168 IN WITNESS WHEREOF, this Fifth Amendment to Declaration of Covenants
169 and Restrictions of Auburn Ridge Subdivision has been executed this 23 day of
170 August, 2001.
171

172 By: Jerry L. Hillenburg
173 Jerry L. Hillenburg
174 Jerry L. Hillenburg
175

176
177
178 STATE OF INDIANA)
179) SS:
180 COUNTY OF DeKalb)

181
182
183 Before me a Notary Public in and for said County and State, personally
184 appeared Jerry L. Hillenburg, who acknowledged the execution of the foregoing
185 instrument as his voluntary act and deed for the purpose and uses therein set forth.
186

187 Witness my hand and Notarial Seal this 23 day of August, 2001.
188

189 My Commission Expires: _____ Notary Public (R)
190
191 Printed: Jerry L. Hillenburg
192

193 CHICAGO TITLE
194 Resident of _____ County
195

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203 This Instrument Prepared by:
204 Jerry Hillenburg
205 8365 Woodlawn Drive
206 Martinsville IN 46151
207 317-422-8884
208

Exhibit "A"

Legal Description for Auburn Ridge Subdivision

Auburn Ridge Section I

Part of the West Half of the Northwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County, Indiana, described as follows:

BEGINNING at a 1-1/2 inch iron pipe in the county road which marks the southwest corner of the West Half of the Northwest Quarter; thence North no degrees 28 minutes 03 seconds East (assumed bearing), with the west line of the West Half and in the county road, 288.40 feet to an iron survey nail; thence North 77 degrees 47 minutes 21 seconds East, 1136.46 feet to an iron pin; thence South 89 degrees 23 minutes 20 seconds East, 223.95 feet to an iron pin on the east line of the West Half; thence South no degrees 39 minutes 32 seconds West, with the east line of the West half, 520.31 Feet to an iron pin which marks the southeast corner of said West Half; thence South 89 degrees 43 minutes 35 seconds West, with the south line of the West Half, 1331.08 feet to the Point of Beginning.

Containing 13.005 acres more or less, including that portion of the lands hereby dedicated to the public for roadway purposes and subject and to any other rights-of-way, easements or restrictions of record or observable.

continued

Exhibit "A"

continued

Also:

Auburn Ridge Section II

Part of the North Half of the Southwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County, Indiana, described as follows:

Commencing at a 1-1/2 inch iron pipe which marks the northwest corner of the above captioned North Half; thence North 89 degrees 43 minutes 35 seconds East (assumed bearing) with the north line of the North Half, 730.00 feet to a found iron pin with cap engraved "Holloway-S0530" and the POINT OF BEGINNING of the parcel herein described; thence South no degrees 33 minutes 08 seconds West, 616.44 feet to a found iron pin with cap engraved "Holloway-S0530"; thence North 89 degrees 43 minutes 35 seconds East, 260.00 feet to a found iron pin with cap engraved "Holloway-S0530"; thence South no degrees 33 minutes 08 seconds West, 718.23 feet to a found iron pin with cap engraved "Holloway-S0530" on the south line of the North Half; thence North 46 degrees 50 minutes 52 seconds East, 411.15 feet to a point in a creek; thence in a creek for the following eight (8) courses; 1) North 37 degrees 36 minutes 02 seconds East, 82.34 feet; 2) North 79 degrees 23 minutes 33 seconds East, 46.38 feet; 3) North 16 degrees 58 minutes 25 seconds East 109.78 feet; 4) North 67 degrees 28 minutes 04 seconds East, 134.87 feet; 5) North 45 degrees 08 minutes 01 seconds East, 136.53 feet; 6) North 17 degrees 59 minutes 58 seconds East, 312.79 feet; 7) North 05 degrees 34 minutes 35 seconds West, 94.30 feet; 8) North 17 degrees 14 minutes 46 seconds East, 97.41 feet; thence North 09 degrees 28 minutes 29 seconds West, 249.07 feet to a point on the north line of the North Half of the Southwest Quarter; thence South 89 degrees 43 minutes 35 seconds West, 971.68 feet to the Point of the Beginning.

Containing 20.050 acres, more or less, and subject to any easements, rights-of-way or restrictions of record or observable.

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Exhibit "A"
continued

Also:

Auburn Ridge Section III

Part of the West Half of the Northwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County., Indiana, described as follows:

Commencing at a 1 ½ inch iron pipe which marks the southwest corner of the above captioned Northwest Quarter; thence North no degrees 28 minutes 03 seconds East (assumed bearing), with the west line of the Northwest Quarter, 288.40 feet to an iron survey nail which marks the northwest corner of Auburn Ridge - Section I, as per plat recorded in Deed Record 419 page 166; thence North 77 degrees 47 minutes 21 seconds East, 709.97 feet to an iron pin and the POINT OF BEGINNING of the parcel herein described; thence North no degrees 39 minutes 32 seconds East, 485.03 feet to an iron pin; thence North 89 degrees 43 minutes 35 seconds East, 639.81 feet to an iron pin on the east line of the West Half of the Northwest Quarter; thence South no degrees 39 minutes 32 seconds West, with said east line, 400.00 feet to an iron pin which marks the northwest corner of the aforesaid Auburn Ridge - Section I; thence with the north line of Auburn Ridge - Section I for the following two (2) courses; 1) North 89 degrees 27 minutes 20 seconds West, 223.95 feet to an iron pin; thence South 77 degrees 47 minutes 21 seconds West, 386.77 feet to the Point of Beginning.

Containing 6.257 acres, more or less, and subject to any easements, rights - of - ways or restrictions of record or observable.

continued

Exhibit "A"
continued

Also:

Auburn Ridge Section IV

DESCRIPTION OF PARCEL ONE (1): Part of the North Half of the Southwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County., Indiana, described as follows:

Commencing at a 1 ½ inch iron pipe which marks the northwest corner of the above captioned North Half; thence North 89 degrees 43 minutes 35 seconds East (assumed bearing), with the north line of the North Half, 1701.68 feet to an iron pin with cap engraved, "Holloway-S0530" which marks the northeast corner of Tract 14 in Auburn Ridge-Section II, as per plat recorded in Deed Record 426 page 201 and the POINT OF BEGINNING of the parcel herein described; thence with the east line of said Auburn Ridge-Section II, South 09 degrees 28 minutes 29 seconds East, 249.07 feet to a point in a creek; thence in said creek and with the east line of Auburn Ridge-Section II for the following Two (2) courses; 1) South 17 degrees 14 minutes 46 seconds West, 97.41 feet; 2) South 05 degrees 34 minutes 35 seconds East, 72.35 feet to an iron pin with cap engraved "Holloway-S0530"; thence South 82 degrees 49 minutes 34 seconds East, 78.36 feet; thence North 89 degrees 13 minutes 49 seconds East, 103.89 feet; thence along a curve, concave to the south, having a radius of 50.00 feet, a central angle of 43 degrees 15 minutes 22 seconds, a cord bearing South 69 degrees 08 minutes 30 seconds East, 36.86 feet, an arc distance of 37.75 feet; thence South 47 degrees 30 minutes 49 seconds East, 67.85 feet; thence North 89 degrees 43 minutes 35 seconds East; 671.63 feet to an iron pin on the east line of the North Half; thence North no degrees 25 minutes 38 seconds East, with said east line, 479.44 feet to a stone which marks the northeast corner of the North Half; thence South 89 degrees 43 minutes 35 seconds West, with said north line, 960.47 feet to the Point of Beginning.

Containing 10.000 acres, more or less, and subject to any easements, rights-of-way or restrictions of record or observable.

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Exhibit "A"

continued

Also:

DESCRIPTION OF PARCEL TWO (2): Part of the North Half of the Southwest Quarter of Section 25, Township 13 North, Range 2 East, Morgan County, Indiana, described as follows:

Commencing at a 1 ½ inch iron pipe which marks the northwest corner of the above captioned North Half; thence North 89 degrees 43 minutes 35 seconds East (assumed bearing), with the north line of the North Half, 1701.68 feet to an iron pin with cap engraved "Holloway-S0530" which marks the northeast corner of Tract 14 in Auburn Ridge-Section II, as per plat recorded in Deed Record 426 page 201 thence with the east line of said Auburn Ridge-Section II, South 09 degrees 28 minutes 29 seconds East, 249.07 feet to a point in a creek; thence in said creek and with the east line of Auburn Ridge-Section II for the following Two (2) courses; 1) South 17 degrees 14 minutes 46 seconds West, 97.41 feet; 2) South 05 degrees 34 minutes 35 seconds East, 72.35 feet to an iron pin and the POINT OF BEGINNING of the parcel herein described; thence continuing with the east line of Auburn Ridge-Section II and in said creek for the following seven (7) courses; South 05 degrees 34 minutes 35 seconds East, 21.95 feet; 2) South 17 degrees 59 minutes 58 seconds West, 312.79 feet; 3) South 45 degrees 08 minutes 01 seconds West, 136.53 feet; 4) South 67 degrees 28 minutes 04 seconds West, 134.87 feet; 5) South 16 degrees 58 minutes 25 seconds West, 109.78 feet; 6) South 79 degrees 23 minutes 33 seconds West, 46.38 feet; 7) South 37 degrees 36 minutes 02 seconds West, 82.34 feet; thence South 46 degrees 50 minutes 52 seconds West, with the east line of Auburn Ridge-Section II, a distance of 411.15 feet to a found iron pin with cap engraved "Holloway-S0530" on the south line of the North Half, which marks the southwest corner of Tract 13 in Auburn Ridge-Section II; thence North 89 degrees 35 minutes 32 seconds East, with the south line of the North Half, 1675.11 feet to a found pin with cap engraved "Holloway-S0530" which marks the southeast corner of the North Half; thence North no degrees 25 minutes 38 seconds East, with the east line of the North Half, 851.27 feet to an iron pin; thence South 89 degrees 43 minutes 35 seconds West, 671.63 feet;

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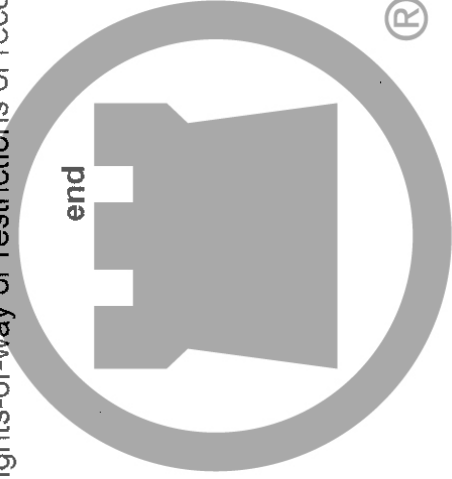
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Exhibit "A"

continued

thence North 47 degrees 30 minutes 49 seconds West, 67.85 feet; thence along a curve, concave to the south, having a radius of 50.00 feet, a central angle of 43 degrees 15 minutes 22 seconds, a cord bearing North 69 degrees 08 minutes 30 seconds West, 36.86 feet, an arc distance of 37.75 feet; thence South 89 degrees 13 minutes 49 seconds West, 103.89 feet; thence North 82 degrees 49 minutes 34 seconds West, 78.36 feet to the Point of Beginning.

Containing 24.829 acres, more or less, and subject to any easements, rights-of-way or restrictions of record or observable.



CHICAGO TITLE

RECEIVED FOR RECORD

Aug 29 2001

at 8:01 A. m.

Raven Brunnett
MORGAN COUNTY RECORDER